

# EXHIBIT 1

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ANIBAL RODRIGUEZ, et al.,

Plaintiffs,

vs.

Case No. 3:20-cv-04688-RS

GOOGLE LLC,

Defendant.

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\*\*\*ATTORNEYS' EYES ONLY\*\*\*

VIDEO DEPOSITION OF MICHAEL J. LASINSKI

San Francisco, California

Thursday, June 29, 2023

Volume 1

STENOGRAPHICALLY REPORTED BY:

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JOB NO. 5971107

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DEPOSITION OF MICHAEL J. LASINSKI, taken  
on behalf of the Defendant, at Willkie Farr &  
Gallagher, LLP, One Front Street, 34th Floor,  
San Francisco, California, commencing at  
10:19 a.m., Thursday, June 29, 2023 before  
REBECCA L. ROMANO, a Certified Shorthand Reporter,  
Certified Court Reporter, Registered Professional  
Reporter.

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I N D E X

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DESCRIPTION

|           |  |     |
|-----------|--|-----|
| Exhibit 1 | Expert Report of Michael J. Lasinski dated February 20, 2023;  | 16  |
| Exhibit 2 | Native Excel Spreadsheet, GOOG-RDRZ-00188768;  | 140 |
| Exhibit 3 | Defendant Google LLC's Supplemental Objections and Responses to Plaintiffs' Interrogatories, Set Six (Nos. 12, 16 & 17); | 163 |

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E X H I B I T S (cont'd)

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|           | DESCRIPTION  |      |
| Exhibit 4 | Defendant Google LLC's Second Supplemental Objections and Responses to Plaintiffs' Interrogatories, Set Six. | 174  |

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1 San Francisco, California; Thursday, June 29, 2023

2 10:19 a.m.

3 ---o0o---

4

5 THE VIDEOGRAPHER: We are going on the 10:20:29

6 record at 10:19 a.m. on June 29th, 2023.

7 Please note that the microphones are

8 sensitive and may pick up whispering and private

9 conversations. Please mute your phones at this

10 time. Audio and video recording will continue to 10:20:44

11 take place unless all parties agree to go off the

12 record.

13 This is Media Unit 1 of the

14 video-recorded deposition of Michael Lasinski in

15 the matter of Anibal Rodriguez, et al., versus 10:21:03

16 Google LLC, filed in the United States

17 District Court, Northern District of California.

18 Case No. 3:20-cv-04688-RS.

19 The location of the deposition is One

20 Front Street, 34th Floor, San Francisco, California 10:21:25

21 94111.

22 My name is Shawna Hynes, representing

23 Veritext Legal Solutions, and I'm the videographer.

24 The court reporter is Rebecca Romano from

25 the firm Veritext Legal Solutions. 10:21:41

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1 I am not related to any party in this 10:21:45  
2 action nor am I financially interested in the  
3 outcome.

4 If there are any objections to  
5 proceeding, please state them at the time of your 10:21:54  
6 appearance.

7 Counsel present will now state their  
8 appearances and affiliations for the record  
9 beginning with the noticing attorney. For those  
10 appearing remotely, the court reporter has noted 10:22:06  
11 your appearances for the record.

12 MR. SANTACANA: Eduardo Santacana,  
13 Willkie Farr & Gallagher, for Google.

14 MR. LEE: James Lee, Boies Schiller  
15 Flexner, for the plaintiffs. 10:22:19

16 And I have with me a summer intern, who I  
17 will allow him to introduce himself.

18 MR. KUATE-FODOUOP: Kevin Kuate-Fodouop  
19 with Susman Godfrey.

20 THE VIDEOGRAPHER: Can you state that one 10:22:28  
21 more time loud.

22 MR. KUATE-FODOUOP: Kevin Kuate-Fodouop  
23 with Susman Godfrey.

24 THE VIDEOGRAPHER: Thank you.

25 Will the court reporter please swear in 10:22:36

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1 the witness, and then counsel may proceed. 10:22:37

2 THE COURT REPORTER: If you could raise  
3 your right hand for me, please.

4 THE DEPONENT: (Complies.)

5 THE COURT REPORTER: You do solemnly 10:22:39

6 state, under penalty of perjury, that the testimony  
7 you are about to give in this deposition shall be  
8 the truth, the whole truth and nothing but the  
9 truth?

10 THE DEPONENT: I do. 10:22:40

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14

15 10:22:40

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20 10:22:40

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24

25 ///// 10:22:51

1 MICHAEL J. LASINSKI, 10:22:51  
2 having been administered an oath, was examined and  
3 testified as follows:

4  
5 EXAMINATION 10:22:51

6 BY MR. SANTACANA:

7 Q. Good morning, Mr. Lasinski. It's nice to  
8 meet you. I will be asking you some questions  
9 today.

10 Have you testified before? 10:23:00

11 A. I have, yes.

12 Q. How many depositions have you sat for?

13 A. I would estimate approximately 40.

14 Q. Okay. So you know the ropes.

15 MR. LEE: Objection. Form. 10:23:11

16 THE DEPONENT: I've -- I have been  
17 deposed many times.

18 Q. (By Mr. Santacana) Okay. Any reason you  
19 can't testify truthfully today?

20 A. No. 10:23:18

21 Q. How many expert engagements do you think  
22 you've had over the course of your career?

23 A. Probably 150, 200.

24 Q. Who is representing you today in this  
25 deposition? 10:23:43

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1 A. Mr. Lee. 10:23:44

2 Q. Have you retained Mr. Lee as your lawyer?

3 A. I have not retained him as my lawyer, no.

4 Q. Okay. And have you paid him to represent

5 you today? 10:23:55

6 A. I am not paying him to represent me.

7 Q. Do you have any other lawyers in this

8 case?

9 A. Well, there are other lawyers in this

10 case, yes. There are lawyers from Susman Godfrey, 10:24:05

11 and there are lawyers from Morgan & Morgan.

12 Q. You haven't retained any of them?

13 A. I have not.

14 Q. Okay. And did you retain any lawyers to

15 respond to the subpoena that you were issued? 10:24:16

16 A. I did not, no.

17 Q. Who handled the response to the subpoena?

18 A. The lawyers in this matter did.

19 Q. Did you review the subpoena?

20 A. I did. 10:24:27

21 Q. How many hours have you spent on this

22 engagement?

23 A. I would have to estimate.

24 Q. Sure.

25 A. 160, 200, somewhere in there. 10:24:41

1 Q. Anyone else work with you on this expert 10:24:47  
2 engagement?  
3 A. Yes.  
4 Q. Who?  
5 A. Chris Schulte from my firm. Also Rujuta. 10:24:53  
6 I cannot remember her last name, also from my firm.  
7 And then Meryn Campbell from my firm.  
8 Q. Did your hours estimate just now include  
9 their time?  
10 A. No. 10:25:14  
11 Q. Roughly how much time do you think they  
12 together have spent on this?  
13 A. I mean, roughly, altogether, I would  
14 imagine it's over a thousand hours, but maybe  
15 closer to 1,500 hours. 10:25:26  
16 Q. What's your role at Ankura Consulting?  
17 A. I have two roles -- three roles.  
18 I lead the intellectual group at Ankura  
19 Consulting. I have clients, like what I do here  
20 today. And then I also mentor staff people at 10:25:50  
21 Ankura.  
22 Q. Do you own a share of Ankura's profits?  
23 A. I have shares in the firm.  
24 Q. So higher profits, you get paid more?  
25 A. No, that's not how it works. 10:26:14

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1 Q. Okay. Apart from compensation related to 10:26:16  
2 your hourly rate, do you get any compensation from  
3 Ankura based on the performance of the consulting  
4 firm?

5 A. To -- actually, for me, it's a black box. 10:26:33  
6 So my -- my boss sets my bonus. So I don't know  
7 how that -- how that works.

8 Q. Okay. But you get paid a bonus at the  
9 end of the year, I guess?

10 A. I -- it's possible that I would get paid 10:26:47  
11 a bonus.

12 Q. How many times have you been retained as  
13 an expert by the lawyers in this case?

14 A. Twice.

15 Q. What was the other time? 10:26:59

16 A. For the Brown case.

17 Q. You have no other current engagements  
18 with them?

19 A. No, I do not.

20 Q. And you are including -- go ahead. 10:27:10

21 A. Just to be -- there are different law  
22 firms here. I had been retained previously before  
23 that by Susman Godfrey in other cases.

24 Q. How many times, approximately?

25 A. Approximately three other times. 10:27:25



1 Q. Okay. Were any of those cases consumer 10:27:27  
2 class actions?  
3 A. Yes.  
4 Q. Which ones?  
5 A. There was one for Susman & Godfrey 10:27:41  
6 against Qualcomm.  
7 Q. Okay. And then you haven't been  
8 otherwise retained for anything else by the  
9 Boies Schiller firm?  
10 A. No. 10:27:56  
11 Q. Or the Morgan & Morgan firm?  
12 A. Not that I can remember, no.  
13 Q. Okay. Can you describe for me or  
14 summarize your assignment in this case?  
15 A. Sure. 10:28:16  
16 Q. Are you referring there to your report?  
17 A. I am, yes.  
18 Q. So why don't we mark it.  
19 (Exhibit 1 was marked for identification  
20 by the Court Reporter and is attached hereto.) 10:28:25  
21 Q. (By Mr. Santacana) We've premarked the  
22 digital version as Exhibit 1. So I guess  
23 afterward, we can just mark this as 1A or something  
24 in case you draw on it or something like that.  
25 But go ahead. 10:28:38

1 A. Okay. 10:28:40

2 Q. Answer the question.

3 A. Sure. I describe what my assignment is  
4 on Section 4 of my report.

5 And my assignment in this matter includes 10:28:44

6 "assessing the feasibility of identifying and

7 quantifying various measures of monetary relief

8 tied to Plaintiffs' claims," including those that I

9 discuss in my report, which include, in this case,

10 unjust enrichment and plaintiffs' actual damages. 10:29:04

11 Q. And -- sorry -- could you say again where  
12 you are reading from?

13 A. This is Section 4 of my report.

14 Q. Okay. Thank you.

15 So apart from that description of your 10:29:15

16 assignment in Section 4 of your report, is there

17 anything else that you have done in this case in

18 your capacity as an expert witness?

19 A. Well --

20 MR. LEE: I'm sorry. I may have missed 10:29:29

21 it.

22 Are you limiting to just Section 4, or

23 the whole report?

24 Q. (By Mr. Santacana) I'm saying, other

25 than the assignment described in Section 4 -- let 10:29:36

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1 me ask it a different way. 10:29:39

2 Other than your assignment as described  
3 in Section 4 of your report, has there been any  
4 other assignment that you've needed to perform as  
5 an expert in this case? 10:29:45

6 A. The other portion of the assignment that  
7 I performed is described in my report. And it  
8 talks about the apportioning of monetary relief to  
9 the classes and the class members.

10 I provide examples of apportionment 10:30:08  
11 methods that are available. I think my report  
12 explains what I did in great detail. So, you know,  
13 there's -- there's a lot that goes into that  
14 assignment.

15 Q. Is there any other -- 10:30:30

16 A. And I --

17 MR. LEE: Hold on -- hold on.

18 THE DEPONENT: And I just want to make  
19 sure.

20 So there's a lot that goes into that 10:30:34  
21 assignment, so I've -- you know, to the extent that  
22 there are other portions of my report that go into  
23 my opinion, they're in my report.

24 Q. (By Mr. Santacana) Fair enough.

25 Have you reached any expert conclusions 10:30:44

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1 or opinions in this case other than those embodied 10:30:47  
2 in your report?

3 A. Not at this time, I have not.

4 Q. And do you, sitting here now, have any  
5 intention of presenting expert opinion in this case 10:30:57  
6 other than those embodied or encompassed by your  
7 report?

8 A. No, I have not been asked to do so at  
9 this time.

10 Q. Did you read the expert reports that 10:31:09  
11 rebut your report that were served by Google's  
12 counsel?

13 A. I did, yes.

14 Q. And those are the Knittel report and the  
15 Ghose report? 10:31:18

16 A. They are, yes.

17 Q. You reviewed those?

18 A. I did, yes.

19 Q. Did members of your team review those as  
20 well? 10:31:24

21 A. They did.

22 Q. Is it your role in this case to provide  
23 opinions that are favorable to the lawyers who have  
24 retained you?

25 MR. LEE: Objection. Form. 10:31:43

1 THE DEPONENT: That -- that is not how I 10:31:43  
2 understand my role, no.

3 Q. (By Mr. Santacana) How do you understand  
4 your role?

5 A. My understand my role to provide an 10:31:48  
6 independent opinion of my belief of what I talk  
7 about in my report, which is my opinion of monetary  
8 damages, specifically in this case unjust  
9 enrichment and actual damages.

10 Q. If it turns out that you've made mistakes 10:32:09  
11 in your report, are you open to correcting them?

12 A. Yes.

13 Q. Did you attempt to perform your  
14 assignment in this case truthfully, honestly, and  
15 according to a sound methodology? 10:32:21

16 A. I have, yes.

17 Q. And would you agree with me that your  
18 obligation as an independent expert does not end  
19 with your report; if you discover that there's  
20 something wrong with it after you've served it, you 10:32:30  
21 are obligated to admit that?

22 A. I don't know if I'm specifically  
23 obligated to admit that, but that would be my  
24 professional practice. I would never do anything  
25 different than that. 10:32:45

1 Q. Fair enough. 10:32:46

2 Did you read any other expert reports in  
3 this case from the plaintiffs or from Google other  
4 than your own, of course, Knittel and Ghose?

5 A. I read Mr. Hochman's report. 10:33:01

6 I believe that there was another report,  
7 if I'm remembering correct -- correctly, from a  
8 Mr. Black. Or it might have been just a  
9 declaration.

10 Q. Black had a report. 10:33:20

11 A. So -- so then it was -- then it was -- I  
12 at least read parts of that report as well.

13 Q. Any others?

14 A. I may have, but I can't recall as I'm  
15 sitting here. 10:33:30

16 Q. Hoffman (phonetic)?

17 A. I thought I said Mr. Hoffman.

18 Q. Mr. Hochman, yes. There's also a  
19 Hoffman.

20 A. Oh, I don't recall if I did -- did or  
21 not. 10:33:38

22 Oh, I'm sorry. I also -- Mr. Keegan's  
23 report.

24 Q. Snyder (phonetic)?

25 A. I do not recall reading Mr. Snyder's 10:33:51

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1 report. 10:33:53

2 Q. Okay. Did you read Mr. Hochman's report  
3 before finalizing your report?

4 A. No, I did not.

5 Q. The first time you had read it was after 10:34:03  
6 you had finalized your report?

7 A. Correct.

8 Q. But you had conversations with him before  
9 you finalized your report?

10 A. Yes, I did. 10:34:12

11 Q. How long were those conversations in  
12 total?

13 A. Hours. I don't know how long.

14 Q. So --

15 A. Specifically. 10:34:19

16 Q. Less than or more than five hours,  
17 roughly?

18 A. Probably less than five hours.

19 Q. Okay. And those were all before you  
20 served your report? 10:34:28

21 A. Yes. I had -- I have also had a  
22 conversation with him since I've served my report.

23 Q. One conversation?

24 A. Yes.

25 Q. What was it about? 10:34:38

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A. It was about refreshing my recollection  
on his opinions as it relates to incremental costs  
and conversion tracking.

4                   Those were two. I think that there might  
5   be other things that were -- that we discussed.                   10:35:09  
6   But those were two things.

7 Q. How long was the conversation?

|   |                            |
|---|----------------------------|
| 8 | A. Probably about an hour. |
|---|----------------------------|

|   |          |
|---|----------|
| 9 | Q. When? |
|---|----------|

10           A.     It was after I served my report.     I                         10:35:16

11     can't -- I can't remember exactly when, but...

|    |                             |
|----|-----------------------------|
| 12 | Q. Was it in the last week? |
|----|-----------------------------|

13           A.   Probably was within the last week.

|    |                                 |
|----|---------------------------------|
| 14 | Q. Was it in the last 48 hours? |
|----|---------------------------------|

|    |                    |          |
|----|--------------------|----------|
| 15 | A. No, I don't so. | 10:35:28 |
|----|--------------------|----------|

16 Q. Were their lawyers on the call?

|    |         |
|----|---------|
| 17 | A. Yes. |
|----|---------|

18 Q. Who was on the call?

19           A.     Mr. Lee was on the call.

20 Q. Did he speak? 10:35:40

|    |         |
|----|---------|
| 21 | A. Yes. |
|----|---------|

22 Q. So you and Mr. Lee and Mr. Hochman talked  
23 about refreshing your recollection on Mr. Hochman's  
24 opinion about incremental costs?

|    |         |          |
|----|---------|----------|
| 25 | A. Yes. | 10:35:51 |
|----|---------|----------|



1 Q. And his opinions about conversion 10:35:51  
2 tracking?  
3 A. Correct.  
4 Q. Were there any other subjects you  
5 discussed? 10:35:58  
6 A. Those were the primary ones. I don't  
7 recall any others.  
8 Q. Okay. What did he tell you about his  
9 opinion on incremental costs that refreshed your  
10 recollection? 10:36:06  
11 A. So my opinion -- in my opinion in my  
12 report, I consider one set of incremental costs,  
13 traffic acquisitions costs.  
14 I have also looked at the other costs  
15 that have been provided on some of the financial 10:36:41  
16 statements related to the various areas of damages  
17 that I'm looking at. And I -- and I discussed with  
18 him those other costs and whether or not they would  
19 be incremental.  
20 Q. So take a look at Footnote 156 of your 10:37:23  
21 report.  
22 A. Yes.  
23 Q. I believe this is the only part of your  
24 report that discusses the incremental costs  
25 associated with the alleged wrongful conduct. 10:37:57

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1 Just assume for the moment that I'm right 10:38:02  
2 about that.

3 Did your conversation with Mr. Hochman  
4 involve a discussion of incremental costs other  
5 than what's discussed in this footnote? 10:38:17

6 MR. LEE: Objection. Mischaracterizes  
7 the footnote.

8 THE DEPONENT: Well, I believe that this  
9 footnote embodies what I talked about just now as  
10 well with him. 10:38:54

11 Q. (By Mr. Santacana) Okay. I think you  
12 just said, in response to question before that,  
13 that you've "looked at the other costs that have  
14 been provided on some of the financial statements  
15 related to the various areas of damages that I'm 10:39:06  
16 looking at"?

17 A. Yes.

18 Q. And that you discussed "those other costs  
19 and whether or not they would be incremental" with  
20 Mr. Hochman? 10:39:16

21 A. That is accurate, yes.

22 Q. When you say "other costs that have been  
23 provided on some of the financial statements," are  
24 you referring to the financial statements that you  
25 reviewed before serving your report? 10:39:28

1 A. Yes. 10:39:31

2 Q. Did you express an opinion as to whether  
3 those cost were or were not incremental in your  
4 report?

5 A. They are -- in my opinion is that they 10:39:41  
6 were not be -- that they would not be incremental.

7 Q. And which ones in particular are you  
8 talking about?

9 A. Well, I would have to have the documents  
10 in front of me to -- to identify those. 10:39:51

11 Q. So just so I understand, you -- go ahead.

12 A. But I do remember, for example, there  
13 were engineering costs as part of those. There  
14 were infrastructure or machine-related costs in  
15 some of those. And I think that there were also 10:40:11  
16 some administrative or HR costs in those.

17 But I cannot remember fully all of the  
18 costs that were in there as I sit here today.

19 Q. Did you discuss engineering costs,  
20 infrastructure or machine-related costs, and 10:40:28  
21 administrative or HR costs with Mr. Hochman after  
22 serving your report in the conversation we've been  
23 discussing?

24 A. Well, I don't recall specifically if it  
25 was after serving my report. Certainly before 10:40:41

1 serving my report. 10:40:46

2 Q. So -- sorry. I'm focused on the  
3 conversation where your recollection was refreshed  
4 as to his opinion on incremental cost.

5 And so keeping that conversation in 10:40:57  
6 mind --

7 A. Which -- which? No. Start over.  
8 Which conversation are we talking about?

9 Q. I'm keeping in mind the conversation you  
10 had with Mr. Hochman after you served your report. 10:41:07

11 A. Okay.

12 Q. Which refreshed your recollection as to  
13 his opinion on incremental costs.

14 You with me so far?

15 A. Yes. 10:41:17

16 Q. Okay. So keeping that conversation in  
17 mind, which specific costs did you discuss with  
18 Mr. Hochman and whether or not they qualify as  
19 incremental costs?

20 MR. LEE: In that conversation. 10:41:28

21 THE DEPONENT: In that conversation.

22 MR. LEE: He's accepting that you've had  
23 prior conversations, and this refreshes it. But  
24 he's limiting his question to the -- the  
25 conversation you had after the -- the report was -- 10:41:36

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1 MR. SANTACANA: Right. Your most recent 10:41:39  
2 conversation.

3 THE DEPONENT: I am not sure that I'll  
4 remember all of it. But what I can remember as I  
5 sit here is, as it relates to their, what I'll 10:41:45  
6 call, infrastructure costs -- meaning Google's  
7 infrastructure costs -- he indicated to me, and it  
8 makes sense, that there would be no incremental  
9 infrastructure costs as it relates to the damages  
10 in this -- the damages in this matter. 10:42:11

11 Q. (By Mr. Santacana) Okay. And what did  
12 Mr. Lee say about incremental costs during the  
13 conversation?

14 A. I don't recall Mr. Lee saying anything  
15 about that. 10:42:27

16 Q. Okay.

17 A. During the conversation.

18 Q. And then you said that he also refreshed  
19 your recollection as to his opinion on conversion  
20 tracking? 10:42:34

21 A. Yes.

22 MR. LEE: For the record, Mr. Santacana  
23 means Mr. Hochman, not Mr. Lee.

24 MR. SANTACANA: Mr. Hochman.  
25 Mr. Hochman. 10:42:43

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1 Q. (By Mr. Santacana) What did he tell you 10:42:46  
2 about conversion tracking during your most recent  
3 conversation, Mr. Hochman?

4 A. Well -- well, generally, he refreshed my  
5 recollection on our earlier conversations on how 10:43:11  
6 the information gathered by Google that relates to  
7 conversion tracking is collected and then used by  
8 Google in its algorithms and machine learning  
9 techniques that ultimately go into its -- its  
10 bidding, its automated bidding process that it 10:43:46  
11 provides to advertisers.

12 Q. What is the automated bidding process  
13 that you're referring to?

14 A. Well, I think we are starting to get into  
15 a technical area here. 10:44:09

16 I understand that there are certain  
17 situations where if -- if an ad is requested, there  
18 would be automated bids, an automated bidding  
19 process, such that advertisers can bid for the ad  
20 in an automated fashion to actually serve the ad in 10:44:28  
21 an automated fashion.

22 Q. And what does it mean for a bid to be  
23 automated as opposed to not automated?

24 A. Well, my understanding is that there is  
25 an automation -- again, this is getting into a 10:44:41

1 technical area. 10:44:42

2 But my understanding is that there is  
3 something called a manual bidding process, where  
4 you can manually bid for ad -- where an advertiser  
5 can manually -- manually bid for ads -- ad 10:44:50  
6 placement, I should say -- versus automated.

7 Q. So would you say that this -- I guess you  
8 were speaking to Mr. Hochman because you're not  
9 really an expert on this particular subject?

10 A. I'm not a technical expert in this case. 10:45:06  
11 That is correct.

12 Q. Well, I know you're not a technical  
13 expert. But right now, we're talking about  
14 advertisers' bidding processes. So I just -- is  
15 that a subject that you are an expert in? 10:45:16

16 A. I -- I would say that I have familiarity  
17 with it up to the point of being able to calculate  
18 damages.

19 So I'm not an expert in the technology,  
20 but I am expert -- I have enough familiarity to 10:45:30  
21 calculate damages for those types of cases, for  
22 these types of cases.

23 Q. Has there been another expert engagement  
24 in which you have calculated damages based on  
25 automated advertisement bidding processes on the 10:45:45

1 Internet? 10:45:51

2 A. What was that last part? I didn't hear

3 the last part of your question.

4 Q. On the Internet?

5 A. Yes. 10:45:56

6 Q. Which case?

7 A. Brown.

8 Q. Has there been any other?

9 A. Not that I can recall, no.

10 Q. How did you become familiar with 10:46:02

11 automated bidding such that you could opine on

12 damages?

13 A. Through my work in -- in this case, as

14 well as my work in the Brown case, and my

15 discussions with the technical experts. 10:46:15

16 Q. Before you were retained in Brown, did

17 you have any familiarity with the automated bidding

18 process such that you could calculate damages?

19 A. I never attempted to. But I had heard --

20 I had heard of and read information on the 10:46:42

21 automated bidding process up until then. But I had

22 never attempted to, so I don't know if I could have

23 or couldn't have.

24 Q. You mentioned manual bidding. Can you

25 tell me what that is? 10:46:56

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1           A.     So my understanding is that that allows                         10:46:57  
2 manual bidding -- again, this is a technical  
3 expert -- a technical area, and I'm not a technical  
4 expert in this case.

5 But my understanding is that allows -- 10:47:09  
6 manual bidding allows an advertiser to set a bid  
7 price in a manual -- set a price for their ad in a  
8 manual fashion versus an automated fashion.

9 Q. In a situation where an advertiser is  
10 engaging in manual bidding, is it your 10:47:47  
11 understanding that they are bidding on a particular  
12 performance metric for the ad?

13           A.    I don't think I have an understanding of  
14       that -- how that -- how that works in that much  
15       detail. 10:48:03

16 Q. What is the bid that is manual in your  
17 example? What is it for?

18           A.   Well, my understanding is that you would  
19   be bidding for an ad placement to place an ad.

|    |  |          |
|----|--|----------|
| 20 | Q. What is it called a "bid" as opposed to a | 10:48:17 |
| 21 | "price"?                                     |          |

22           A.     Well, my -- my understanding is that  
23       you -- from a bidding standpoint that there are  
24       multiple potential advertisers that could actually  
25       place the ad. And so one is placing an ad in a

10:48:33

1 potentially competitive situation. 10:48:41

2 Q. And how do you understand the bid to be  
3 expressed in monetary terms?

4 A. I -- this is beyond my technical  
5 understanding of how that -- how that works. 10:48:56

6 Q. Fair enough.

7 So suffice it to say, though, the bid  
8 that the advertiser is placing, whether it's manual  
9 or automated, your understanding is that that is in  
10 exchange for the placing of ads? 10:49:09

11 A. That's roughly my understanding, yes.  
12 Again, I'm not the technical expert here.

13 Q. Apart from your work with Mr. Hochman and  
14 your work on these cases -- well, actually, let me  
15 start over. 10:49:31

16 Why don't you tell me, what is the basis  
17 of your understanding of the testimony you just  
18 gave about the automated and manual bidding  
19 processes?

20 A. It's reading the documents and here in my 10:49:40  
21 discussion with Hochman.

22 Q. Reading the documents that were produced  
23 in this case?

24 A. Correct.

25 Q. Does it also include reading the 10:49:47

1 documents produced in the Brown case? 10:49:49

2 A. I don't -- I don't -- I mean, if I did  
3 learn something in the Brown case that I couldn't  
4 forget, there's potential -- that that potentially  
5 could be part of my memory as to how this -- how 10:50:01  
6 this works.

7 But, certainly, I didn't use any Brown  
8 documents in my calculations here that were not  
9 also -- there were some overlaps. So there were  
10 some documents produced in this case as well as the 10:50:17  
11 Brown case.

12 Q. Right. Of course. And I understand that  
13 you're only human.

14 My question is just, your understanding  
15 of the automated bidding process that you've been 10:50:24  
16 talking about, did that come from documents in this  
17 case, or both documents in this case and in this  
18 other case?

19 A. I -- I don't recall as I sit here.

20 Q. Other than documents, litigation 10:50:41  
21 documents, produced by Google, your understanding  
22 of the automated bidding process, is it based on  
23 anything else?

24 A. Well, I did do publicly -- public  
25 research. 10:50:53

1 Q. Okay. 10:50:53

2 A. But I don't recall if anything came in  
3 through public research on that particular topic.

4 Q. What do you mean, "if anything came in  
5 through public research"? 10:51:00

6 A. That -- that would influence my opinion  
7 on the subject that we've just been talking about.

8 Q. If it did, would you have cited it in  
9 your report?

10 A. If -- yeah, if there -- if there was 10:51:16  
11 information that I relied upon that is public, I  
12 cited it in my report.

13 Q. Okay. And then you said, in addition to  
14 documents from the litigation, potentially public  
15 research if you cited it in your report, also your 10:51:32  
16 basis of your understanding comes from Hochman?

17 A. Correct.

18 Q. Okay.

19 (Discussion off the stenographic record.)

20 MR. LEE: Eduardo, do you mind just 10:51:48  
21 keeping your voice a little up.

22 THE DEPONENT: Sure.

23 MR. LEE: It's hard to hear.

24 Q. (By Mr. Santacana) And just to put a  
25 fine point on it: The understanding that comes 10:52:01

1 from Hochman with respect to the automated bidding 10:52:03  
2 process, that's from your conversations with him  
3 before you finalized your report, correct?

4 A. Correct.

5 Q. It is not from his report? 10:52:12

6 A. That is correct.

7 Q. What about more generally the market  
8 dynamics of the online advertising industry? You  
9 talk about that a little bit in your report.

10 What's the basis of your understanding of 10:52:32  
11 that?

12 A. The basis of my understanding of that is  
13 twofold: I've had cases, litigation, patent  
14 infringement cases, in the online advertising  
15 space; plus I've also helped companies license 10:53:07  
16 patents in the online advertising space.

17 I should say online and mobile space,  
18 generally.

19 Q. Sure. And I include mobile and online  
20 for -- at least for purposes of today. 10:53:33

21 Your reference to litigation patent  
22 infringement cases, in those cases, you were  
23 providing damages analyses relating to patent  
24 infringement in the online advertising space?

25 A. Yes. 10:53:48

1 Q. And those analyses included licensing 10:53:48  
2 analysis?

3 A. Those -- in those cases, as best -- the  
4 best of my recollection, related to a reasonable  
5 royalty. 10:54:09

6 Q. Okay. And do you happen to recall which  
7 cases those are?

8 A. I do not as sit here. I could look at my  
9 CV to try to see if I could -- if any of them  
10 actually went all the way to deposition and/or 10:54:22  
11 trial.

12 Q. Do you recall ever testifying about the  
13 online advertising industry?

14 There's an Amazon IRS case, but I think  
15 that's a tax case? 10:55:30

16 MR. LEE: Is that a new question, or do  
17 you want him to answer the first question?

18 MR. SANTACANA: Just helping him.

19 MR. LEE: Not a question at all?

20 THE DEPONENT: As I'm sitting here, I 10:55:37  
21 don't see any case that's gone to -- at least  
22 deposition.

23 As it relates to that, that Amazon case  
24 is a tax case.

25 Q. (By Mr. Santacana) Okay. So you've 10:55:49

1 looked at your expert testimony disclosure here. 10:55:50

2 You don't see any online advertising space cases  
3 that made it to deposition or trial?

4 A. Correct.

5 Q. You've issued reports in such cases? 10:56:02

6 A. I don't think so. I don't think it's  
7 gone all the way to a report.

8 Q. Okay. And so far, we've been talking  
9 about the patent infringement cases. You also  
10 mentioned that you have helped companies with 10:56:18  
11 licensing in the online advertising space?

12 A. Yes.

13 Q. That was a consulting-type arrangement?

14 A. Correct.

15 Q. For licensing patents relating to online 10:56:28  
16 advertising?

17 A. Correct.

18 Q. Got it.

19 Again asking about the market dynamics in  
20 the online advertising space, apart from the 10:56:46  
21 consulting you did in patent infringement cases and  
22 to help companies license patents, is there any  
23 other basis for your understanding of the market  
24 dynamics of the online advertising space?

25 A. Not beyond what I've already talked about 10:57:05

1 in my previous testimony here today. 10:57:08

2 Q. Relating to the automated bidding  
3 process?

4 A. Well, related to my research.

5 Q. Right. 10:57:20

6 A. And preparation of my current report as  
7 well as my Brown report.

8 Q. Did you discuss the market dynamics of  
9 the online advertising industry with Mr. Hochman  
10 before finalizing your report? 10:57:32

11 MR. LEE: Objection. Vague.

12 THE DEPONENT: As I sit here, I'm not  
13 recalling specifically speaking about that, but it  
14 may have come into our discussions.

15 Q. (By Mr. Santacana) You're aware that 10:58:28  
16 Christopher Knittel's expert report discusses the  
17 market dynamics of advertising in mobile apps,  
18 right?

19 A. Well, I have read his report. So I'm  
20 aware of what he talks about in his report. 10:58:45

21 Q. And you're aware that's one subject he  
22 discusses?

23 A. He -- yes, he does.

24 Q. Would you consider yourself an expert in  
25 that area, the market dynamics of advertising in 10:58:55

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1 mobile apps? 10:58:58

2 A. I would consider myself an economic  
3 expert that has the ability to look at the  
4 information here and provide an appropriate  
5 opinion. 10:59:16

6 To the extent that that requires  
7 consideration of the documents that look at the  
8 market dynamics of the industry, yes, I'm -- I'm  
9 fully an expert to that level.

10 But I don't hold myself as an expert and 10:59:31  
11 I don't -- don't do consulting in that field.

12 Q. I'm having a little trouble parsing your  
13 answer.

14 What is the difference between  
15 considering yourself an economic expert with the 10:59:48  
16 ability to look at the information here and provide  
17 an opinion on the one hand; and, on the other hand,  
18 holding yourself out as an expert in the field?

19 A. Well, I don't -- I do not provide  
20 companies -- I do not provide companies with -- or 11:00:04  
21 do not hold myself out to provide companies with  
22 consulting or strategy as it relates to the market  
23 dynamics as you were discussing them.

24 I do provide economic analyses as it  
25 relates to damages in this case or licensing in 11:00:22

1 other cases that relate to -- that have related to 11:00:30  
2 this field.

3 Q. Do you see the damages calculations you  
4 did in this case analogous to licensing opinions  
5 you have issued in other cases in any way? 11:00:42

6 A. Could you repeat that?

7 Q. Do you see the damages opinion that you  
8 have given in this case analogous in any way to the  
9 licensing opinions you've given in other cases?

10 A. Certainly from a -- certainly from a 11:01:30  
11 methodology standpoint, there are certain areas  
12 that are analogous.

13 Q. What are those --

14 A. Well, in cal- -- in licensing, one looks  
15 at the profitability of products and isolates the 11:01:50  
16 profitability of products, as I've done here in the  
17 unjust enrichment case. One looks at comparables  
18 as I've done here in parts of my reports -- part of  
19 my report as well.

20 Q. By "comparables," you're referring to, 11:02:11  
21 for example, other market transactions for data as  
22 you describe them in your actual damages opinion?

23 A. That -- that is in part correct, yes.

24 Q. Is the structure of your actual damages  
25 opinion with respect to its consideration of what a 11:02:27

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1 user would be willing to give up certain data for, 11:02:32  
2 is that, in your mind, analogous to the  
3 hypothetical negotiation structure for a reasonable  
4 royalty?

5 A. No, it's not -- it's not analogous to 11:02:48  
6 that. That's a different -- that's a different  
7 analysis.

8 Q. As I read your actual damages opinion,  
9 you do seem to be imagining some type of  
10 hypothetical negotiation; is that fair to say? 11:03:10

11 MR. LEE: Objection. Form.

12 THE DEPONENT: I'm -- no, I don't know.  
13 I -- I wouldn't call it a "hypothetical  
14 negotiation."

15 Q. (By Mr. Santacana) Why not? 11:03:25

16 A. Because what I'm doing is calculating the  
17 fair -- the fair market value -- the fair value  
18 based on a market transaction.

19 I don't -- I'm not imaging a hypothetical  
20 negotiation, if you would, like one does in a 11:03:39  
21 patent infringement case.

22 Q. Okay. I understand.

23 How many expert reports have you issued  
24 related to consumer privacy damages -- consumer  
25 privacy damages? 11:04:11

1 A. Two, if you -- this one as well as Brown. 11:04:17

2 Q. Before that, you'd never done it before?

3 A. I don't -- I don't believe I had issued  
4 an expert report on consumer privacy damages, no.

5 Q. Have you ever testified as to consumer 11:04:31  
6 privacy damages other than right now and in Brown?

7 A. I do not believe so, no.

8 Q. Have you ever been retained to consult  
9 with any company or other entity on the subject of  
10 consumer privacy? 11:04:54

11 A. I don't recall being retained in any case  
12 like that -- other case like that.

13 Q. Before you were retained in Brown, had  
14 you ever before issued an expert opinion of any  
15 kind as to the value of consumers' online activity 11:05:19  
16 data?

17 A. Could you repeat that? I want to make  
18 sure I answer that correctly.

19 Q. I'm going to try to make it less of a  
20 mouthful. 11:05:35

21 Before you were retained in Brown, had  
22 you ever issued an expert opinion of any kind as to  
23 the value of consumer data?

24 A. Not -- no, not an expert -- I have not  
25 issued an expert report on the value of consumer 11:06:01

1 data. 11:06:03

2 Q. Or provided expert opinion on that  
3 subject?

4 A. I have not provided expert opinion on  
5 that subject. I have consulted on transactions 11:06:10  
6 related to that subject.

7 Q. What do you mean?

8 A. I worked on transactions where companies  
9 were acquired for access. And my understanding of  
10 the acquisition was that it was related -- or that 11:06:42  
11 it related to the data that was being acquired.

12 MR. LEE: Just one second. I didn't  
13 represent to you in any of that work, so I don't  
14 know --

15 THE DEPONENT: Yes. 11:06:59

16 MR. LEE: -- but to the extent any of  
17 that work is governed by confidentiality agreements  
18 or protective orders, I just want to be mindful of  
19 that. Okay?

20 THE DEPONENT: Yeah. I'm not going to be 11:07:06  
21 able to say anything about that, because it is all  
22 governed by...

23 MR. LEE: I think you're fine now.

24 THE DEPONENT: Yeah.

25 MR. LEE: But I just want to issue that 11:07:13

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1 warning, because I don't know -- I don't know what 11:07:14  
2 governs.

3 Q. (By Mr. Santacana) So just to clarify,  
4 you said you have worked on transactions where the  
5 companies were acquired because the acquiring 11:07:22  
6 company wanted that -- the acquired company's data?

7 A. Correct.

8 Q. And the data in question was consumer  
9 data?

10 A. That is my recollection, yes. 11:07:37

11 Q. Was it online data or some other type of  
12 data?

13 A. I really don't feel like I can go any  
14 further than that.

15 Q. Why? 11:07:46

16 A. Because these are all -- these are all --  
17 my case that I work on or my matter that I worked  
18 is confidential, and so I'm not at liberty to say.

19 Q. Well, I think you can tell me whether it  
20 was online data or not. I'm not sure that 11:08:00  
21 specifies any particular entity.

22 A. Well --

23 MR. LEE: You have to be comfortable with  
24 that, based on --

25 THE DEPONENT: Yeah. 11:08:15

1 MR. LEE: -- your understanding of your 11:08:15  
2 agreements you entered into. Obviously,  
3 Mr. Santacana can't answer that for you because he  
4 wasn't a party to any of that, nor was I.

5 So I think answer it if you can. But if 11:08:23  
6 you don't feel comfortable, that's fine too.

7 THE DEPONENT: Yeah. At this point I  
8 just don't feel comfortable.

9 MR. SANTACANA: Okay. We'll have to talk  
10 about that during the break. 11:08:32

11 Q. (By Mr. Santacana) Did you -- I think  
12 you said that, in those transactions, you were  
13 valuing consumer data?

14 A. No, I was not.

15 Q. You were not. Were you valuing the 11:08:44  
16 companies to be acquired?

17 A. Yeah. Yes.

18 Q. And part of valuing the company,  
19 presumably, included valuing the value of the data  
20 to be acquired? 11:08:59

21 A. Correct.

22 Q. Okay. What methodology did you use to  
23 appraise the data to be acquired?

24 A. I -- I cannot say.

25 Q. Your methodology was confidential? 11:09:15

1           A.    I -- my methodology -- two things: One           11:09:17  
2           is I think the whole transaction is confidential;  
3           my role in the transaction is confidential.

4                    So I'm -- I'm not able to say any more  
5           about that transaction.                               11:09:33

6           Q.    Okay. Well, let me ask you this: Before  
7           this case and Brown, had you ever applied any  
8           methodology to valuing consumer data?

9           A.    You're testing the limits of my memory  
10          in -- in addition to confidentiality. So I do not       11:10:01  
11          recall specifically how the valuation was done in  
12          that case, in that -- I shouldn't say it's a case.  
13          It's a matter. It's a transaction.

14          Q.    I think you said earlier that your task  
15          or your goal in the actual damages opinion was to       11:10:22  
16          determine the fair market value of the data that's  
17          at issue in this case; is that fair?

18          A.    A fair value, yes.

19          Q.    Is that different from fair market value?

20          A.    Yeah, I think -- I think I misspoke when       11:10:37  
21          I said "fair market value." That's a defined term  
22          in accounting.

23          Q.    And you don't mean to assume the burden  
24          of that term with respect to this opinion?

25          A.    I'm not even sure that -- fair market       11:10:47



1 value is a different -- a different standard when 11:10:49  
2 you're valuing a company or a transaction. And I'm  
3 not -- I was not valuing a company in that -- in  
4 this case.

5 Q. Does the data in question in this case 11:11:02  
6 have a fair market value?

7 A. I -- that would go beyond my assignment  
8 in this case, and I haven't -- I haven't determined  
9 that.

10 Q. Do you have an opinion as to whether the 11:12:46  
11 data at issue in this case has a fair market value?

12 A. I don't have that opinion. I have not  
13 formed an opinion on that.

14 What I have calculated here is a fair  
15 price to incentivize this particular group of 11:12:57  
16 people, the class members, to provide access to  
17 their data.

18 Q. Have you ever expressed an expert opinion  
19 in any engagement as to the fair market value of  
20 consumer data? 11:13:20

21 A. I don't recall doing so.

22 Q. Are you aware of any authority that would  
23 suggest that there is a fair market value to  
24 consumers' online data?

25 A. I am not aware of -- of any authority on 11:13:47

1 that as I sit here. 11:13:50

2 Q. Are you aware of any authority that  
3 suggests how to value consumers' online data?

4 MR. LEE: Can you ask that again? I'm  
5 sorry. 11:14:07

6 Q. (By Mr. Santacana) Are you aware of any  
7 authority that suggests how to value consumers'  
8 online data?

9 A. Not as I sit here, no.

10 Q. Is there a difference between the value 11:14:32  
11 of a consumer's online data to that consumer and  
12 the fair market value of the same data?

13 A. Could you repeat that?

14 Q. Is there a difference between the value  
15 of a consumer's online data to that consumer in the 11:15:12  
16 fair market value of the same data?

17 A. I -- that -- that -- that would be  
18 something I would need to investigate. I have not  
19 investigated that as part of my report.

20 Q. Can you take a look at paragraph 130? 11:15:27

21 A. Yes.

22 Q. In that paragraph, you say, "actual  
23 damages can be determined as a function of the  
24 payments necessary to incentivize an individual to  
25 knowingly surrender the choice to keep activity on 11:15:44

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1 mobile apps private and allow an organization to 11:15:47  
2 track app activity data."

3 Do you see where I'm reading that?

4 A. Yes.

5 Q. How does that task of determining actual 11:15:59  
6 damages differ from the task of determining the  
7 fair market value of the data at issue in this  
8 case?

9 MR. LEE: Under the rule of completeness,  
10 I'm going to finish the rest of that paragraph. 11:16:11

11 "I have therefore identified and  
12 considered various indicators of both the payments  
13 that Google and other organizations have paid to  
14 individuals to track their online activity and the  
15 fees that individuals have paid to various 11:16:24  
16 organizations in their attempt to increase online  
17 privacy and/or avoid tracking."

18 I think with that full reading, you can  
19 try to answer counsel's question.

20 THE DEPONENT: I -- I mean, in -- in this 11:16:55  
21 case, fair -- fair market value, my understanding  
22 of fair market value is that you have a willing  
23 buyer and a willing seller.

24 In this case, these were not willing  
25 participants. What I have done here is to try to 11:17:10

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1 determine a price based on comparables that 11:17:15  
2 participants have been willing to separate with  
3 their data for. And so --

4 Q. (By Mr. Santacana) Why --

5 MR. LEE: Hold on. 11:17:25

6 THE DEPONENT: And so this, in my  
7 opinion, is a very conservative value relative to  
8 what they would have -- would have actually  
9 demanded, what these participants would have  
10 actually demanded. 11:17:41

11 Q. (By Mr. Santacana) Why would you use  
12 comparables in which the participants were willing  
13 to part with their data to determine what an  
14 unwilling participant would need to be paid to part  
15 with that data? 11:17:55

16 A. I think that that's a very conservative  
17 view of what the actual damages would be. And  
18 so -- and it's the best available information to  
19 make that calculation.

20 And so I believe that it's appropriate in 11:18:14  
21 this case, given the information that's available,  
22 as well as my task to calculate actual damages.

23 Q. So as I understand your task, you were  
24 essentially trying to determine the price at which  
25 an unwilling seller of data would become a willing 11:18:39

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1 seller, right? The point at -- the fulcrum at 11:18:43  
2 which the person goes from no, I won't, to yes, I  
3 will, right?

4 A. I think that this is -- this is a floor,  
5 if you will, for what that would be. I think it 11:18:57  
6 likely would be higher than this, so I think it's a  
7 very conservative view of what you're asking.

8 Q. I understand you think it's a  
9 conservative view.

10 When you say it's a "floor," is that 11:19:10  
11 different than what I'm calling the fulcrum? It's  
12 the point at which the seller goes from unwilling  
13 to willing?

14 A. It's -- it's yes. I guess -- I guess  
15 we're talking in similar terms. 11:19:22

16 Q. So, in essence, you are trying to imagine  
17 a transaction between a willing buyer and a willing  
18 seller and determining at what price the buyer and  
19 the seller are both willing to buy and sell, right?

20 MR. LEE: Objection to form. 11:19:42  
21 Mischaracterizes.

22 THE DEPONENT: No, I -- I don't believe  
23 that that's correct.

24 Q. (By Mr. Santacana) How is that different  
25 from determining the price at which the seller is 11:19:47

1 willing to sell? 11:19:50

2 A. In -- in this case, I believe that this  
3 is -- we -- we do have examples of willing -- of  
4 willing sellers.

5 Q. I know. 11:20:05

6 A. For -- for this particular transaction.  
7 However, the -- the class is not a willing seller.  
8 So I look at this as a floor.

9 Q. What do you mean --

10 A. The price -- 11:20:18

11 MR. LEE: Hold on.

12 THE DEPONENT: The price would likely be  
13 higher in -- in this case.

14 MR. LEE: Just for the record, Eduardo, I  
15 know you don't mean to do it, but I think 11:20:27

16 Mr. Lasinski is a very methodical speaker, so he's  
17 not always finished with his answer even when  
18 there's a pause.

19 So I think we should just slow it down  
20 just a beat so that we're not talking over each 11:20:36  
21 other.

22 Q. (By Mr. Santacana) You said in this  
23 case, we have examples of willing sellers for this  
24 particular transaction.

25 What did you mean by "this particular 11:20:48

1 transaction"? 11:20:51

2 A. What I meant -- what I meant in this case  
3 is the market study in which Google has paid  
4 participants to access their information, in other  
5 words, the Ipsos study. Google itself has paid 11:21:08  
6 willing participants a certain amount of money to  
7 access their -- to access their data.

8 I look -- I look at that as a floor for  
9 the actual damages because the participant groups  
10 are different between willing -- a willing group 11:21:32  
11 and an unwilling group.

12 Q. How do you know they're different?

13 A. Because in this case -- because in this  
14 case, the participants in this study have signed up  
15 to provide access to -- Google access to their 11:22:03  
16 data. And the class -- the class has specifically  
17 indicated that it doesn't want Google to access its  
18 data by turning -- turning its SWAA off. So they  
19 are an unwilling participant.

20 Q. You posit that the class members in this 11:22:52  
21 case who had turned WAA off would nevertheless  
22 become willing sellers at a particular price,  
23 namely at least \$3 per device, right?

24 A. No. What I'm -- what I'm positing is  
25 that they would -- that that is a very conservative 11:23:16

1 floor for actual damages. And so that -- that 11:23:19  
2 would be a floor for actual damages, a floor for  
3 what that calculation would look like.

4 Q. Have you tried to calculate actual --  
5 actual damages in the case, or just tried to 11:23:35  
6 calculate the floor of actual damages?

7 MR. LEE: Objection to form.

8 THE DEPONENT: I -- I think it's an  
9 appropriate calculation for actual damages. I  
10 think it could be higher. But it's conservative. 11:23:53

11 Q. (By Mr. Santacana) You have said that  
12 it's conservative many times already today, and you  
13 have called it a floor multiple times. So I'm just  
14 trying to understand.

15 Was your task to calculate the floor, or 11:24:06  
16 was your task to calculate the actual damages to  
17 the actual class members?

18 A. My task was to calculate the actual  
19 damages to the actual class members. I believe  
20 I've done that in a conservative manner. 11:24:19

21 Q. What does that mean? Did you get it  
22 right or not?

23 A. I do -- I do have it right, yes.

24 Q. Then why do you say it's conservative?

25 A. Because it's -- because at the end of the 11:24:33



1 day, it -- there's a potential for it to be higher. 11:24:37

2 But I believe -- but I believe, based on  
3 the information that I have available to me,  
4 that -- that it is the best estimate of what would  
5 be appropriate in this case. 11:24:48

6 Q. All right. Is there a potential that  
7 it's a lot higher?

8 MR. LEE: Objection. Form.

9 THE DEPONENT: Not that I'm aware of, no.

10 Q. (By Mr. Santacana) You're not concerned 11:24:59  
11 that your actual damages opinion is grossly  
12 undercompensating the class?

13 A. I am not.

14 Q. Why not?

15 A. Because I think, based on the information 11:25:13  
16 available to me, that this is an appropriate  
17 conservative estimate.

18 Q. I know that's what you think. That's  
19 your conclusion.

20 I want to know why that's your 11:25:20  
21 conclusion.

22 A. I -- I think I just answered.

23 Q. No, you didn't.

24 A. Okay. Well, I think I did.

25 Q. Why do you think it's appropriate? 11:25:28

1 A. Based on the -- 11:25:29

2 MR. LEE: Asked and answered.

3 Go ahead.

4 THE DEPONENT: Based on the information

5 that's available to me, I think that it -- that -- 11:25:34

6 that it is -- that it is appropriate.

7 Q. (By Mr. Santacana) The Ipsos study paid  
8 \$3 a month?

9 A. In certain cases, yes.

10 Q. But your actual damages opinion pays \$3 11:25:47  
11 just once?

12 A. That is correct.

13 Q. Why?

14 A. Because based on the information that I  
15 have, I am able to determine that -- I am able to 11:26:08  
16 determine the number of devices that had SWAA off  
17 at at least a given point in time.

18 I am not able to determine with certainty  
19 that it had SWAA off for -- SWAA off and  
20 actually -- and actually met with other 11:26:49

21 requirements for the damages calculation, such as  
22 hitting third-party sites with Google trackers on  
23 them, after that initial calculation -- after that  
24 addition SWAA-off calculation.

25 Q. If you had proof as to which class 11:27:18

1 members hit third-party sites with the Google 11:27:25  
2 trackers on them, as you say, and when and how many  
3 times, would that change your actual damages  
4 opinion?

5 A. Well, my understanding is that 11:27:39  
6 information has been deleted, so it's not  
7 available. So I don't --

8 Q. Let's assume that it's available.  
9 Would that change your opinion?

10 A. I -- I don't know, because I don't have 11:27:48  
11 that --

12 MR. LEE: Are you representing that  
13 you'll -- you're going to make data available that  
14 you've previously represented was deleted?

15 MR. SANTACANA: James. 11:27:55

16 MR. LEE: I'm just trying to understand  
17 your question.

18 Q. (By Mr. Santacana) My question is,  
19 assume the data's available. Would that change  
20 your actual damages opinion? 11:28:02

21 MR. LEE: Are you making that  
22 representation or not?

23 MR. SANTACANA: I'm not answering your  
24 question, James. It's not my deposition.

25 MR. LEE: I'll take that as a no. 11:28:09

1 THE DEPONENT: So I don't -- I don't have 11:28:11  
2 that information, so I don't know if it would  
3 change it. I can't know unless I had that  
4 information.

5 Q. (By Mr. Santacana) Well, I asked you why 11:28:20  
6 you assigned \$3 per device rather than \$3 per  
7 month, and you said because you were missing data  
8 on whether a particular device actually went to  
9 third-party sites.

10 And my question is, if you knew whether 11:28:34  
11 they had actually gone to third-parties sites and  
12 you knew how often and when, then would it be \$3  
13 per month or some other calculation, or would it  
14 still just be \$3 per device?

15 A. I don't know because I don't have that 11:28:48  
16 information. I would have to look at it, study it,  
17 and analyze it with all the other factors of the  
18 case. And since I don't have it, I can't answer  
19 that question.

20 Q. Then why do you say that that information 11:28:58  
21 is the reason why you have opined that actual  
22 damages is the \$3 once not \$3 per month or \$3 per  
23 something else?

24 A. You -- because you asked that question.  
25 Again, I don't know -- I don't know the answer, and 11:29:17

1 I won't know the answer until I get -- unless I got 11:29:19  
2 the information.

3 Q. Is the Ipsos --

4 A. But that's -- but that's -- that's a  
5 potential reason why. But I can't answer it in any 11:29:27  
6 more detail than I have.

7 Q. Is the Ipsos study comparable to the  
8 transaction you're imagining in paragraph 130?

9 MR. LEE: Objection to the use of -- the  
10 continued use of "imagined." 11:29:45

11 Q. (By Mr. Santacana) Hypothesizing. I  
12 don't mean to say it's make believe.

13 A. I believe that the Ipsos study provides  
14 the best data point --

15 Q. Is it comparable -- 11:30:01

16 A. -- for --

17 MR. LEE: Hold on.

18 A. -- provides the best data point for a --  
19 for the actual damages calculation.

20 Q. (By Mr. Santacana) Is it comparable? 11:30:11

21 A. Yes, it is sufficiently comparable for  
22 what I'm using it for. Yes.

23 Q. Then why did you change the payment from  
24 \$3 per month to \$3 per device?

25 Actually, let me strike that for a 11:30:27

1 second. 11:30:29

2 You're aware that Google has records of  
3 when devices -- when users had WAA on and WAA off?

4 A. Yes.

5 Q. And for how long? 11:30:38

6 A. Yes.

7 Q. So you could, for example, calculate  
8 number of sWAA-off months for each user, right?

9 A. I did do that, yes.

10 Q. You did do that. 11:30:49

11 So why didn't you pay them per sWAA-off  
12 month in your actual damages opinion?

13 A. I mean, ultimately, I thought it was more  
14 appropriate and -- and conservative to do it -- to  
15 do a one-time calculation based on the information 11:31:02  
16 that I had available to me.

17 Q. Why was it more appropriate to do a  
18 one-time calculation?

19 MR. LEE: Asked and answered.

20 THE DEPONENT: Yeah. 11:31:16

21 MR. LEE: Go ahead and answer it again if  
22 you want.

23 THE DEPONENT: Again, even if I -- even  
24 if I had sWAA-off months, that wouldn't necessarily  
25 tell me whether or not, technically -- technically, 11:31:28

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1 if they hit a third-party site with Google track -- 11:31:37  
2 with a Google tracker on it.

3 And so in this case, to be, as I've said  
4 in the past, appropriate and conservative, I did  
5 it -- I calculated a one-time payment per device. 11:31:52

6 Q. (By Mr. Santacana) And why would you pay  
7 a SWAA-off device if they never hit a third-party  
8 tracker site at all?

9 A. I think it's unlikely that a  
10 third-party -- that -- it's unlikely that a third 11:32:16  
11 party -- that a SWAA-off device would not hit a  
12 third-party tracker. It's -- it's very likely that  
13 it would based on usage as well as the amount of  
14 trackers that are out there.

15 Q. You would agree that different people 11:32:36  
16 would hit third-party trackers different amounts  
17 depending on their usage patterns?

18 A. That may be -- that may be accurate.

19 Q. It may be accurate?

20 You think it's possible that every member 11:32:58  
21 of the class has hit the exact same number of  
22 third-party trackers?

23 A. No.

24 Q. Okay. So it is accurate?

25 A. It is -- that is accurate. 11:33:05

1 Q. Okay. So is it fair to say, then, that 11:33:06  
2 your actual damages opinion is that each device  
3 should be compensated \$3 once because it is  
4 extremely unlikely -- excuse me -- it is extremely  
5 likely that they were exposed to the allegedly 11:33:30  
6 wrongful conduct at least once?

7 A. Yes.

8 Q. What if they were exposed to the  
9 allegedly wrongful conduct a thousand times? How  
10 could their actual damages only be \$3, but somebody 11:33:44  
11 who is exposed once also has damage of \$3?

12 MR. LEE: Asked and answered.

13 Go ahead and answer it again.

14 THE DEPONENT: I -- again, I don't think  
15 that you could calculate with certainty which 11:34:04  
16 member, based on the data available to me, would  
17 hit it once or a thousand times.

18 I think to incentivize someone to give up  
19 their information, whether it's once or a thousand  
20 times, you would have to pay them. 11:34:23

21 And so...

22 Q. (By Mr. Santacana) A nonzero amount?

23 A. You -- you would have to pay them. And  
24 in my opinion, a fair price -- a fair value for  
25 that is \$3. 11:34:37



1 Q. And is that fair value regardless of the 11:34:39  
2 amount of data in question?

3 A. Yeah, in this case, I think -- I think  
4 that a uniform amount per device is appropriate.  
5 Yes. 11:35:00

6 Q. Why?

7 MR. LEE: Asked and answered.

8 Go ahead.

9 THE DEPONENT: Well, for example, the --  
10 the Ipsos study, that's what they pay. They -- 11:35:10  
11 they pay a user \$3 per device per month, no matter  
12 how much usage.

13 There -- there certainly is difference --  
14 differences between Ipsos users, but they are not  
15 getting compensated differently per device. 11:35:29

16 Q. (By Mr. Santacana) They're not. That's  
17 true.

18 How do you know that the \$3 per month is  
19 not grossly over-incentivizing users in order to  
20 get a representative sample into the survey? 11:35:42

21 A. If -- based on -- based on a market  
22 transaction or a comparable of what -- what needs  
23 to be paid to get someone to provide their  
24 information, that price -- the \$3 -- is set not  
25 only based -- not only based on the Ipsos study, 11:36:37

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1 but there are other studies that are out there 11:36:39  
2 that -- for example, that I talk about in my report  
3 that actually provide more value than three  
4 bucks -- \$3 per device.

5 So it's not only the Ipsos study in which 11:36:52  
6 Google has actually paid users, but there are other  
7 studies that pay more per device than \$3. So I  
8 think \$3 is an appropriate and a conservative  
9 amount for actual damages.

10 MR. LEE: We've been going about an hour. 11:37:12

11 MR. SANTACANA: I have a couple more on  
12 the Ipsos study, and then --

13 MR. LEE: Okay.

14 MR. SANTACANA: -- we'll switch to a  
15 different subject and -- 11:37:18

16 MR. LEE: Sure.

17 MR. SANTACANA: -- we can take a break  
18 first.

19 Q. (By Mr. Santacana) Are you opining in  
20 this case that none of the participants in the 11:37:24  
21 Ipsos study would have accepted less than \$3 to  
22 participate?

23 MR. LEE: Objection to form.

24 THE DEPONENT: Well, certainly none of  
25 the -- none of the participants did accept less. 11:37:43

1 In fact, they got significantly more than \$3. 11:37:46

2 Q. (By Mr. Santacana) They weren't  
3 negotiating one-on-one with Google to participate  
4 in the study, right? They were just offered a  
5 one-size-fits-all amount? 11:37:57

6 A. That is correct. But their -- their  
7 compensation was significantly higher than \$3.

8 Q. It was \$3 per month?

9 A. Plus, on top of that, they got paid for  
10 their other devices, plus potentially a bonus, plus 11:38:10  
11 a sign-up fee, plus they got a router.

12 So there was significantly more  
13 compensation.

14 Q. So back to my question.

15 Are you opining in this case that none of 11:38:24  
16 the participants in the Ipsos study would have  
17 accepted less than \$3 to participate, had that been  
18 offered, per month?

19 MR. LEE: Calls for speculation.

20 THE DEPONENT: I have not formed that 11:38:39  
21 opinion, no.

22 Q. (By Mr. Santacana) Then how do you know  
23 that it's comparable to the opinion you did form  
24 with respect to the incentivization required to get  
25 a class member to give up the data in question in 11:38:49

1 this case? 11:38:51

2 A. Because -- because in that -- what was --  
3 a market transaction such as this, plus the other  
4 information that I discussed in my report that  
5 actually is higher per device, plus incentivize -- 11:39:03  
6 plus, as you said, incentivizing a variety of folks  
7 to actually sign up to the study, plus the fact  
8 that they're willing participants as opposed to the  
9 class, which would be unwilling, I think \$3 is an  
10 appropriate price. 11:39:27

11 I don't think it gross -- would be  
12 grossly overstating a price. That would be  
13 appropriate.

14 Q. I appreciate your answer, but my question  
15 was a little bit different. 11:39:37

16 The question was: How do you know that  
17 the Ipsos study's payments are comparable to the  
18 opinion you formed in this case with respect to the  
19 incentive required to get a class member to give up  
20 their data if you do not know whether the 11:39:54  
21 participants in the Ipsos study would have accepted  
22 less money?

23 A. I don't believe that it -- I believe that  
24 there is a chance that they would have accepted --  
25 that certain would have accepted less money. 11:40:14

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1 But I think overall, to get it -- Google, 11:40:16  
2 as indicated, to get a fair sample or  
3 representative sample, that this is the  
4 compensation, that this is the compensation that is  
5 necessary to actually incent users. 11:40:28

6 It's greater than the \$3 that we talked  
7 about. It's not just the \$3. It's -- it's more  
8 than that.

9 And in this case, I calculated an  
10 appropriate amount for unwilling participants. So 11:40:44  
11 I think that that's -- it's the right amount.

12 Q. Why should the price paid to the  
13 unwilling participants be lower than the price paid  
14 to the Ipsos participants?

15 A. Well, at the end of the day, I'm using 11:41:06  
16 that as a comparable. It's -- it ultimately is the  
17 same amount. It's the same amount per device.

18 Q. But, it's a lot less, right? Because  
19 Ipsos is per month, and this is one time.

20 So my question is, why do you propose to 11:41:20  
21 pay this class less money than Google pays Ipsos  
22 participants?

23 A. I think -- as I said before, I think that  
24 that's a conservative value --

25 Q. I know -- 11:41:32

1 A. -- to get them to sign up. 11:41:32

2 MR. LEE: Hold on.

3 THE DEPONENT: To get --

4 MR. LEE: Please let him finish.

5 THE DEPONENT: To get them to sign up. 11:41:33

6 Q. (By Mr. Santacana) I know the number is

7 lower, which I think is what you mean by

8 "conservative."

9 My question is why should be lower or not

10 equal or higher? 11:41:44

11 MR. LEE: Asked and answered.

12 THE DEPONENT: I don't -- I don't have

13 another answer besides what I have said before.

14 Q. (By Mr. Santacana) Is the data

15 worthless? 11:41:55

16 A. No, the data -- in my opinion, the data

17 would not be worthless.

18 Q. Is the seller in question more willing

19 than the Ipsos participants?

20 A. No, they are not. 11:42:07

21 Q. Were the sellers in question aware of the

22 data being taken?

23 A. My understanding is that they're not

24 aware of it being taken -- that it was taken.

25 Q. Can you name any factor that would weigh 11:42:20

1 in favor of lowering the Ipsos payment in this 11:42:23  
2 case?

3 MR. LEE: Objection. Mischaracterizes  
4 Ipsos.

5 THE DEPONENT: Yeah, I don't -- I don't 11:42:33  
6 think I'm lowering the Ipsos payment. It is \$3 --  
7 it is \$3 per device. And, in fact, you can get \$3  
8 per device per month.

9 But I think that that's an appropriate  
10 amount, a conservative amount, for this case. 11:42:45

11 Q. (By Mr. Santacana) You said earlier that  
12 a participant in Ipsos would get more money for  
13 data than a class member in this case. You are  
14 setting a conservative floor of \$3 one time, not \$3  
15 every month, right? 11:43:01

16 A. That is how the calculation works. That  
17 is correct.

18 Q. Okay. Can you name any factor that went  
19 into your calculation that weighed in favor of  
20 lowering the total amount of money the class 11:43:14  
21 members would receive as compared to the  
22 participants in the Ipsos study?

23 A. At the end of the day, I -- the -- the  
24 factor that I considered, we've talked about  
25 already, which is, in the Ipsos study, they're 11:43:37

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1 collecting data every single month based on the app 11:43:42  
2 tracker that is -- the tracker that is put on their  
3 phone.

4 In this case, as I've said, we know the  
5 number -- we know the number of devices that would 11:43:56  
6 have WAA off. We don't know for sure if that  
7 information was tracked every month because we  
8 don't know if it hit a third-party app with a  
9 Google tracker on it.

10 MR. SANTACANA: Okay. Let's take a 11:44:28  
11 break.

12 (Discussion off the stenographic record.)

13 THE VIDEOGRAPHER: This marks the end of  
14 the Media No. 1. Going off the record. The time  
15 is 11:44. 11:44:38

16 (Recess taken.)

17 THE VIDEOGRAPHER: This marks the  
18 beginning of Media No. 2 in the deposition of  
19 Michael Lasinski. We're back on record. The time  
20 is 12:04. 12:05:05

21 Q. (By Mr. Santacana) Mr. Lasinski, I want  
22 to talk about the WAA control for a moment.

23 What is -- and actually, really, the sWAA  
24 control.

25 What are the WAA and sWAA controls, as 12:05:27

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1 you understand them? 12:05:29

2 A. I talk about this in my report on.

3 Q. Where are you reading from?

4 A. In Section 6.

5 WAA relates to Web -- Web and app 12:05:59

6 activity. And that is a Google setting or activity

7 control related to Google's collection and saving

8 of the user's activity on Google sites and apps.

9 Do you want me to go future than that

10 and -- 12:06:16

11 Q. No. I can read the report.

12 A. Okay.

13 And then sWAA, I understand, is

14 supplemental Web and app activity. And that will

15 allow the collection of information on sites and 12:06:29

16 apps that partner with Google and show ads for

17 sites and apps that use Google services, including

18 data that apps share with Google: Chrome browsing

19 history, diagnostics, battery level, and that type

20 of thing. 12:06:56

21 Q. Did you write your report?

22 A. Yes.

23 Q. Every word?

24 A. I had sections that my staff wrote, but

25 then I relooked at every single word and would have 12:07:06

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1 edited it if I thought -- if I thought it needed to 12:07:08  
2 be edited.

3 Q. How many time did you spend writing it?

4 A. 40 hours or so.

5 Q. How much time did you spend reviewing 12:07:21  
6 documents in the case?

7 A. I mean, it's really -- that's really hard  
8 to say, because the whole case is about the  
9 documents. So when I'm writing my report, I'm also  
10 reviewing documents and stuff like that, so... 12:07:39

11 Of about 200 hours I've spent on this  
12 case, probably 120 I was looking at documents, or  
13 maybe more.

14 Q. Okay. Do you have an opinion as to  
15 whether Google has invaded user privacy in this 12:07:57  
16 case?

17 A. I --

18 Q. Let me withdraw the question and ask it a  
19 different way.

20 A. Yeah. 12:08:21

21 Q. You're not rendering an expert opinion  
22 here that Google has misled users, are you?

23 A. No. My -- my opinion -- my opinion is  
24 that liability is found in this case, and if -- if  
25 liability is found, then my damages are at issue. 12:08:39

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1                   So I -- I don't have an opinion one way                   12:08:46  
2                   or another whether or not liability will be found.  
3                   But if liability is found, that's when my opinions,  
4                   I understand, come into play.

5                   Q.    Okay.  And just to make it crystal clear,                   12:08:58  
6                   you're not opining as to whether liability should  
7                   be found either?

8                   A.    I am not.

9                   Q.    In your report, you discuss contemporary  
10                  analogous financial analyses that you consulted in                   12:09:24  
11                  formulating your opinions relating to unjust  
12                  enrichment.

13                  What did you do to validate whether those  
14                  analyses were sufficiently analogous to be relied  
15                  on in this case?   12:09:46

16                  A.    I think you are talking about the, for  
17                  example, [REDACTED] [REDACTED] as well as the  
18                  [REDACTED] model, as well as the ads impact  
19                  document.

20                  Q.    I am.   12:10:33

21                  A.    Okay.  Those are economic models that I  
22                  understand Google developed to calculate the  
23                  economic impact of certain privacy settings that  
24                  were either turned off or about to -- I should --  
25                  that were about to be available to users.                           12:10:58

1 And I looked at -- I looked at that 12:11:03  
2 information that they relied upon. I considered  
3 the information that they relied upon. I  
4 considered the fact that those analyses were  
5 considered by multiple people within Google and 12:11:24  
6 used to provide estimates for business purposes  
7 within Google.

8 Q. Anything else?

9 A. I -- to be -- to be clear, I used certain  
10 inputs from those documents. I don't use those 12:11:49  
11 document in -- or -- or analyses in whole. I use  
12 them in part.

13 And so in my calculations, I'm most  
14 interested in certain aspects of those documents,  
15 because I also rely upon documents that were 12:12:06  
16 provided in this case in -- in the form of  
17 financial -- financial data as well.

18 Q. Would you agree with me that, in order to  
19 rely on the parts of those documents that you did  
20 rely on, you would first need to be sure that the 12:12:34  
21 methodology used to arrive at the numbers in those  
22 documents was sound?

23 A. In part yes and in part no.

24 Q. Explain.

25 A. Well, so, again, I'm not using the 12:13:01

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1 documents in whole. So to the extent that there's 12:13:04  
2 a methodology that's part -- that's not something  
3 that I'm using or relying upon, I'm not as worried  
4 about that piece of the document.

5 As far as the -- the overall methodology 12:13:19  
6 being reliable, those parts that I use I believe  
7 are -- are reliable and I understand to be reliable  
8 based on my review of the documents.

9 Q. Would you also agree with me that parts  
10 that you did rely on would need to be analogous to 12:13:41  
11 what you're analyzing here in order to rely on  
12 them?

13 A. I don't really know what you mean by  
14 "analogous."

15 I would say that they need to be 12:13:58  
16 appropriate to rely upon, and that's what they are.

17 Q. Okay. Well, we can take them piece by  
18 piece.

19 Let's start with paragraph 72.

20 A. Okay. 12:14:23

21 Q. And here, as you said, you identify some  
22 analyses, including the [REDACTED] the  
23 [REDACTED] model --

24 A. Yes.

25 Q. -- a ChromeGuard study? 12:14:37

1 A. Yes. 12:14:40

2 Q. So my first question is about this phrase  
3 in the first sentence of this paragraph 72.

4 " [REDACTED] model which separately  
5 examined the financial impact to Google of changes 12:14:54  
6 in a related user setting, (i.e., GAP)"?

7 A. Yes.

8 Q. What did you mean by the phrase "related  
9 user setting"?

10 A. So in this case, as -- as I say, "i.e., 12:15:33  
11 GAP," GAP is -- my understanding is a privacy  
12 setting similar to what we're talking about here  
13 with SWAA.

14 And so it's appropriate, GAP -- this GAP  
15 analysis in this case, based on the items that I 12:16:00  
16 took out of that analysis for my analysis, is  
17 related or -- or appropriate.

18 Q. On what basis do you conclude that GAP is  
19 privacy setting similar to what we are talking  
20 about here with SWAA? 12:16:28

21 A. So GAP -- so GAP is a privacy setting;  
22 SWAA is also a privacy setting. Both settings have  
23 the ability to impact personalization of ads.

24 There are documents in the record also  
25 that indicate that GAP and SWAA users have 12:17:05

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1 consistent -- consistent feelings about the 12:17:19  
2 trustworthiness of Google and the importance of  
3 their privacy.

4 And the data points that at least the  
5 [REDACTED] [REDACTED] has, which is what I think 12:17:47  
6 we're talking about here that I rely upon, would be  
7 consistent with the data points of an analysis for  
8 SWAA and my methodology.

9 So I think for all those reasons, it's  
10 appropriate. Those -- those -- this analysis is 12:18:08  
11 appropriate for me to look to.

12 Q. You mentioned that both settings have the  
13 ability to impact personalization of ads. Did you  
14 reach a conclusion as to how they differ as to  
15 their impact on personalization of ads? 12:18:28

16 A. In -- in this case, my understanding is  
17 that the use of GAP would stop the personalization  
18 of -- would stop ad personalization.

19 I -- I make a calculation in my report  
20 under one of the scenarios where it -- part of -- 12:19:41  
21 part of the assumption for that calculation is that  
22 there would be no serving of ads at all. My  
23 understanding is that they would be nonpersonalized  
24 ads, and so I'm able to use the information in the  
25 GAP tracker because it comes -- it determines the 12:20:01

1 result of what the value of nonpersonal -- 12:20:04  
2 personalized ads would be versus the value of  
3 personalized ads, or the revenue generated from  
4 personalized ads versus nonpersonalized ads.

5 Q. So my question was whether you reached a 12:20:28  
6 conclusion as to how GAP and SWAA differ with  
7 respect to their impact on personalization of ads.

8 And you answered as to your understanding  
9 of GAP, I think. Feel free to elaborate though.

10 But can you now address SWAA? 12:20:46

11 MR. LEE: Objection. Vague.

12 Answer if you can.

13 THE DEPONENT: I thought that I had  
14 answered that.

15 But the second half of my answer is, my 12:20:55  
16 understanding is that SWAA -- my understanding is  
17 that Google has represented that SWAA-off users do  
18 not receive personalized ads.

19 And so in calculating my unjust  
20 enrichment, I looked at -- what I was looking for 12:21:18  
21 there was the relationship between personalized and  
22 unpersonalized ads. And that's -- and so I use the  
23 GAP tracker -- the GAP -- the GAP's relationship  
24 between personalized and unpersonalized ads from a  
25 revenue standpoint for my calculations. 12:21:44

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1                   So my starting point for sWAA was that                   12:21:47  
2                   there was not personalized -- that they were not  
3                   sWAA if users were not receiving personalized ads.

4                   I think I said that correctly.

5                   Q.     (By Mr. Santacana) Your starting point               12:22:13  
6                   for your unjust enrichment analysis was that sWAA  
7                   users did not receive personalized ads? Excuse me.  
8                   Let me -- strike that.

9                   Your starting point for your unjust  
10                  enrichment analysis was that sWAA-off users did not       12:22:32  
11                  receive personalized ads? Or was your starting  
12                  point that they did but should not have?

13                 A.     No. My starting point for Scenario 2,  
14                  because this only impacts Scenario 2, is that they  
15                  did not receive personalized ads -- I'm sorry.           12:22:52  
16                  Yes. That they -- my understanding is they do not  
17                  receive personalized ads.

18                  To the extent that they did receive  
19                  personalized ads and those were inappropriate, then  
20                  my calculations would be -- would be conservative.       12:23:09  
21                  I would have calculated too little unjust  
22                  enrichment.

23                  And just to be clear, I think we're  
24                  talking about sWAA-off users here.

25                  Q.     We are.   12:23:28

1 In -- you said that was for Scenario 2. 12:23:33

2 For Scenario 1, did you assume that  
3 sWAA-off users received personalized ads from  
4 sWAA-off data?

5 A. No. 12:23:49

6 Q. So for neither scenario did you assume  
7 that sWAA-off users were receiving personalized ads  
8 that relied on sWAA-off data?

9 A. Correct.

10 Q. Then why did you measure the value of 12:24:04  
11 personalization for purposes of your unjust  
12 enrichment opinion?

13 A. I measured the -- to be -- to be clear, I  
14 measured the value of -- I measured the relative  
15 value of personalization. 12:24:20

16 And the reason that I did that was  
17 because when I calculated my Scenario 2 damages, I  
18 needed to deduct nonpersonalized ads from two of my  
19 revenue bases, revenue bases after considering  
20 traffic acquisition costs and other -- and other 12:24:51  
21 apportionments. And the best data point available  
22 is in this impact -- is in this [REDACTED]

23 [REDACTED]

24 And so I was making a downward adjustment  
25 in my model to ensure that I only deducted revenue 12:25:08

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1 from nonpersonalized ads. 12:25:13

2 Q. Why did you want to deduct revenue only  
3 from nonpersonalized ads?

4 A. So under Scenario 2 -- and just I'm  
5 talking about Scenario 2 here. 12:26:04

6 Q. Paragraph?

7 A. This is paragraph 75, bullet 2.

8 Under Scenario 2 -- and I just want make  
9 sure we're only talking about the Scenario 2, I  
10 think. 12:26:22

11 In this case, my understanding is that  
12 Google would be precluded from collecting, saving  
13 and using sWAA-off data WAA/sWAA-off data for  
14 purposes of serving and monetizing advertisements  
15 in two areas, if you will -- Ad Manager and 12:26:42  
16 AdMob -- as Google could not collect or save  
17 requests, impressions or clicks from the  
18 corresponding users.

19 My understanding, based on Google's  
20 representations, is that Google, for a sWAA-off 12:27:06  
21 user, currently is only serving sWAA -- currently  
22 is only serving nonpersonalized ads.

23 So if they can no longer serve ads, the  
24 ads that they would not be serving now, or in -- in  
25 the but-for world, would have to be -- would be 12:27:33

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1 nonpersonalized. 12:27:36

2 So I needed to make sure, in my  
3 calculations, that I was only accounting for its  
4 inability to serve nonpersonalized ads, not its  
5 inability to them serve personalized ads, because 12:27:56  
6 they weren't -- or aren't serving personalized ads.

7 Q. I think I understand.

8 So in -- you're trying to measure, in  
9 Scenario 2 of your unjust enrichment opinion, if,  
10 in the but-for world, Google could not serve ads to 12:28:17  
11 sWAA-off users at all, what is the value to Google  
12 of nonpersonalized advertising?

13 That's what you were trying to determine?

14 A. That's what I determined for -- for  
15 those -- for -- for that scenario. 12:28:42

16 Q. And then once you concluded the value of  
17 nonpersonalized advertising, you then concluded the  
18 proportion of advertising that would be sWAA-off  
19 advertising. And by using those numbers together,  
20 that's how you get your revenue deduction? 12:28:58

21 A. I -- yeah, I think -- yes. I mean, I  
22 think that that's a correct way of looking at it.  
23 I think I actually make the calculation first of  
24 the total number of advertising that was available,  
25 and then make the -- and then make the calculation 12:29:23

1 for what the value of a SWAA-off user -- I'm 12:29:25  
2 sorry -- a SWAA-off nonpersonalized ad would be.  
3 But I don't think it would matter if you  
4 did it -- because math -- math wouldn't -- math  
5 wouldn't change either way. 12:29:39  
6 Q. So let's stick with Scenario 2 for a  
7 moment.  
8 I'm looking at the paragraph 116.  
9 MR. LEE: Paragraph 116.  
10 THE DEPONENT: Okay. 12:30:06  
11 Q. (By Mr. Santacana) So just so I  
12 understand, 116 means -- paragraph 116 means that  
13 you are not including, or you are attempting to  
14 exclude, any App Promo revenue from Scenario 2  
15 because it's already covered by Scenario 1, and 12:30:20  
16 Scenario 2 is additive, right?  
17 A. Yes. I have not made a calculation  
18 for -- I have not made a calculation for App Promo  
19 for its inability to serve ads for SWAA-off users.  
20 And my understanding, that is 12:30:55  
21 conservative; that there are some situations under  
22 SWAA -- under SWAA-off where App Promo would not be  
23 able to serve ads similarly to AdMob and Ad  
24 Manager. However, the data is just not available  
25 to try to parse at that level. 12:31:14

1 Q. So I'm looking at Figure 38 and, I guess, 12:31:16  
2 paragraph 121.

3 A. Yes.

4 Q. Actually, let's back up for a moment to  
5 120. 12:31:36

6 So let me know when you've read it.

7 A. 120?

8 Q. Uh-huh.

9 MR. LEE: I think there's a figure on the  
10 next page, Mike. 12:32:02

11 THE DEPONENT: Uh-huh.

12 MR. LEE: Yeah.

13 Q. (By Mr. Santacana) So at the end of it,  
14 you say "as summarized in the figure below, the  
15 previous discussed [REDACTED] [REDACTED] indicates 12:32:42  
16 that the loss of consent for GAP causes Google to  
17 generate 50.42 percent of the 'App Display' revenue  
18 it would earn with such consent."

19 Do you see that?

20 A. Yes. 12:33:00

21 Q. And Figure 37 summarizes that and bolds  
22 the "App Display" row.

23 A. Yes.

24 Q. So as I understand it, what you  
25 understood from the [REDACTED] [REDACTED] in part, 12:33:11

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1 was that when -- the GAP-off users generate roughly 12:33:16  
2 half of the App Display revenue that GAP on users  
3 do.

4 I think I said that wrong.

5 MR. LEE: Yeah. 12:33:32

6 Q. (By Mr. Santacana) The way you  
7 understood it was that the [REDACTED] [REDACTED]  
8 concluded that Google's advertising revenue for App  
9 Display drops approximately 50 percent when GAP is  
10 off? 12:33:55

11 A. Yes.

12 Q. And then in 121, you say you applied that  
13 percentage 50.24 percent to "reflect the financial  
14 impact of diminished ad relevance when WAA/sWAA is  
15 off." 12:34:18

16 And that is where I get confused.

17 Why are you measuring the financial  
18 impact of diminished ad relevance when sWAA is off?

19 A. Okay. So if -- if sWAA were on -- I'm  
20 trying -- I'm trying to explain this the best way I 12:34:43  
21 can, and I think -- I think I understood your  
22 question.

23 Q. Okay.

24 A. Right now, there are two data points in  
25 the record that I'm aware of that look at 12:34:53

1 diminished ad relevance. One is the one that we 12:34:55  
2 just discussed. There's also one in the ads impact  
3 model that says about 52 percent.

4 There may be others, but those are two  
5 that I can think of right now off the top of my 12:35:05  
6 head -- my head.

7 My job in this matter is to calculate  
8 what -- my job in this matter is to calculate what  
9 Google's unjust enrichment is in Scenario 2.

10 That job requires, in Scenario 2, for me 12:35:27  
11 to figure out what the value of the ads were that  
12 they served, meaning that Google served, when sWAA  
13 was off, because the assumption is that if sWAA  
14 were off under Scenario 2, they could serve no ad.

15 If I just deducted the total revenue 12:35:53  
16 that -- that remains as part of Scenario 2 and  
17 didn't take into consideration the fact that they  
18 are only able to serve sWAA-off, only able to serve  
19 nonpersonalized ads, since they are only able to  
20 serve nonpersonalized ads, then -- only do -- I'm 12:36:20  
21 sorry -- only do serve nonpersonalized ads --  
22 whether or not they are able to do something else  
23 or not, they only do serve nonpersonalized ads -- I  
24 want to make sure that I'm not overcounting the  
25 revenue that Google lost. 12:36:38



1 Q. That is very helpful. I understand now. 12:36:43

2 So looking at Figure 38, by this point in  
3 your report, you've reached a conclusion about how  
4 much revenue during the class period Google earned  
5 from ads served by AdMob to signed-in, SWAA-off 12:37:01  
6 users, net of traffic acquisition costs, and  
7 excluding overlap with App Promo, and excluding  
8 revenue attributable to conversion tracking, which  
9 you discuss in Scenario 1?

10 A. Correct. 12:37:27

11 Q. Did I get that right?

12 A. Yes.

13 Q. And then you reduced that --

14 A. Wait.

15 MR. LEE: Wait. 12:37:32

16 THE DEPONENT: I just want make sure.  
17 Are you talking about -- you're talking about the  
18 first line of -- okay. Yeah. That's where I'm at.

19 Q. (By Mr. Santacana) Then you reduced that  
20 by 50.4 -- well, you reduced it by 49.78 percent? 12:37:37

21 A. I believe that that's right.

22 MR. LEE: Where are you -- I'm sorry. I  
23 don't know where you're indicating, Eduardo.

24 MR. SANTACANA: Just the inverse of  
25 50.42, so -- 12:38:01

1 MR. LEE: Okay. That second line. Got 12:38:01  
2 it.  
3 MR. SANTACANA: 49.58 percent.  
4 THE DEPONENT: No. No. I think I  
5 reduced 50.42 percent. 12:38:07  
6 Q. (By Mr. Santacana) Okay. Because in  
7 paragraph 120, you say loss of consent for GAP,  
8 which is a stand-in for loss of personalization,  
9 causes Google to generate 50.42 percent of the  
10 revenue it would have earned with consent, with 12:38:25  
11 personalization?  
12 A. Right.  
13 Q. Okay. So you multiply it by 50.42  
14 percent, and you arrive at -- at a number?  
15 A. Yes. 12:38:36  
16 Q. Which is in total is 78.77 million?  
17 A. Yes.  
18 Q. Okay. That is very, very helpful. Thank  
19 you.  
20 So coming back to the -- as you said, the 12:38:48  
21 job on Scenario 2, what ads are captured by this  
22 first row of Figure 38, ads served by AdMob to  
23 signed-in sWAA-off users that are neither App Promo  
24 ads nor attributable to conversion tracking?  
25 A. Correct. 12:39:20

1 Q. What ads are those? 12:39:20

2 A. Those would be -- this -- just to be  
3 clear, this is a -- this is a revenue model. I  
4 have never -- I don't know that I could parse it  
5 out between ads that are attributable and 12:39:55  
6 nonattributable to conversion tracking.

7 The revenue -- there's a portion of  
8 revenue that may be attributable to conversion  
9 tracking, a portion of revenue that's not  
10 attributable. 12:40:06

11 So I'm looking at this on a revenue and  
12 profit standpoint versus an ad-by-ad standpoint.

13 Q. And I should have asked a clearer  
14 question. I understand that.

15 I guess I meant more, can you give me an 12:40:16  
16 example of an ad that is included in Figure 38?  
17 What type of ad would be included in Figure 38?

18 A. That would be -- I'm not -- a  
19 nonpersonalized AdMob ad that -- a nonpersonalized  
20 AdMob ad that did not also appear in App Promo. 12:40:58

21 Q. So essentially, all other ad -- types of  
22 ad campaigns that could be run through AdMob?

23 A. Correct. I -- I believe that that is  
24 correct.

25 Q. For Figure 39, which -- sorry, not Figure 12:41:37

1 39. 12:41:42

2 For Figure 41, which I believe is the  
3 equivalent for Ad Manager -- first of all, is this  
4 the equivalent figure for Ad Manager?

5 A. Are you talking the equivalent figure to 12:42:06  
6 38?

7 Q. Yes.

8 A. To Figure 38? Yes, that's the equivalent  
9 figure.

10 Q. So these would be ads that were served by 12:42:21  
11 Ad Manager, not AdMob, to signed-in sWAA-off users  
12 that were not App Promo ads, right?

13 A. Also App Promo. Yes. Yes.

14 My understanding, just so the record is  
15 clear, is that there can be overlap based on the 12:42:43  
16 data produced between App Promo and AdMob, and App  
17 Promo and Ad Manager.

18 And my analyses take out that revenue  
19 that would appear in both App Promo and Ad Manager  
20 for the purposes of Figure 41, before we even get 12:43:09  
21 to this -- before we even get to this point.

22 Q. Where are Ad Manager ads served?

23 A. Okay. So my understanding is that Ad  
24 Manager ads can be served in multiple locations.

25 But to be clear, my analysis only allows for or 12:44:19

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1 only looks at Ad Manager ads that are related to 12:44:27

2 apps.

3 Q. Where did you perform that deduction?

4 A. It's not a deduction. It's a -- it's a  
5 ratio analysis. But I can -- I can show it to you. 12:44:52

6 If you go to Figure -- I'm sorry; not  
7 figure -- schedule 53.

8 Q. I'm there.

9 A. Okay.

10 So if you go to Schedule 53, there's a 12:45:12  
11 calculation here. I have AdMob app gross revenue  
12 for -- in 2019. I have also Ad Manager app gross  
13 revenue.

14 And so I'm able to -- I know, in 2019,  
15 what the percentage of Ad Manager and AdMob are to 12:45:33  
16 each other and what its relative percentage is,  
17 what Ad Manager's relative percentage is to AdMob.

18 And so for all my calculations going  
19 forward, I never allow it to vary off of that  
20 ratio. I do not -- so -- so -- 12:45:59

21 Q. So --

22 A. -- other Ad Manager revenues that could  
23 be actual Ad Manager revenues are not part of my  
24 calculation to begin with.

25 Q. So your Ad Manager revenue numbers in 12:46:17

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1 Figure 41 are, in part, deduced from the AdMob 12:46:20  
2 figures that you know are app figures, since all  
3 AdMob is apps?

4 A. In part. In part.

5 Q. Yeah. 12:46:34

6 A. But I also deduce it from Ad Manager's  
7 app figure as well, because I -- my starting  
8 point --

9 Q. Right.

10 A. -- is only with Ad Manager's app -- 12:46:41

11 Q. At that one point in time --

12 A. -- figure.

13 Q. -- in 2019?

14 A. At that point in time in 2019.

15 Q. Did you do anything to try and determine 12:46:53  
16 how that ratio changed over time?

17 A. Sure. I asked for -- I actually asked  
18 for information as it related to Ad Manager.

19 For example, the App Promo revenue  
20 figures and traffic acquisition costs and AdMob 12:47:13  
21 revenue figures and traffic acquisition costs were  
22 provided for at least a period of the analysis.

23 But even -- even on inquiry, there were  
24 no Ad Manager financials provided beyond what --  
25 what I have here. So based on -- based on the best 12:47:35

1 available information, I used this data point. 12:47:41

2 Q. Got it. Okay. I understand.

3 So we've been talking about Scenario 2  
4 because we were talking about the assumption that  
5 Google did not use sWAA-off data to serve 12:48:21  
6 personalized ads.

7 Do you recall that back-and-forth?

8 A. I do recall that. My understanding is  
9 that it's not an assumption. That it, in fact,  
10 is -- 12:48:35

11 Q. Sure.

12 A. -- Google -- Google has -- Google has  
13 informed us that that is the case.

14 Q. And I'm not disputing that that's true.  
15 I just meant it's one of the assumptions of your 12:48:45  
16 model. That's all.

17 A. Okay.

18 Q. With respect to Scenario 1, does that  
19 assumption play any role?

20 A. No. I -- I mean, I do not have to create 12:49:03  
21 a deduct for that in that case.

22 Q. Okay. And I think I understand why, but  
23 we'll come back to that.

24 So now stepping back to your unjust  
25 enrichment opinion more generally, you opine at 12:49:19

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1 paragraph 71 -- 12:49:25

2 A. Could you hold on for one second?

3 Q. Sure.

4 A. Yes.

5 Q. -- that "the most appropriate and 12:49:39

6 reliable bases for quantifying Google's unjust

7 enrichment from the alleged wrongful conduct are"

8 essentially Google's income statements for App

9 Promo and AdMob, the financial analyses, and then

10 you say -- actually, just strike the question. 12:50:03

11 Let me instead focus your attention on

12 paragraph 73, where there are two bullet points.

13 A. Okay.

14 Q. These two bullet points correspond to

15 Scenarios 1 and 2. 12:50:33

16 A. I need a second to read it.

17 Q. Sure.

18 A. Okay. Yes, I do.

19 Q. They do correspond?

20 A. To -- yeah. One is Scenario 1, and one 12:51:05

21 is Scenario 2.

22 Q. Okay. So how did you arrive at this

23 method of calculating unjust enrichment by Google

24 from SWAA-off data as opposed to any other method?

25 A. Wait. Are you -- are you talking about 12:51:50



1 the Scenario 1 now, or Scenario 2 or... 12:51:52

2 Q. Well, both scenarios are attempting to  
3 measure -- I believe they are attempting to measure  
4 profits that Google earned from sWAA-off data?

5 A. From the use of sWAA-off data, yes. 12:52:09

6 Q. And I assume the -- the assumption behind  
7 that is that Google, had it not been able to use  
8 the sWAA-off data, would not have made these  
9 profits, right?

10 A. Correct. 12:52:21

11 Q. Did you take into consideration how  
12 Google's behavior would change in the but-for world  
13 if it could not have used sWAA-off data in your  
14 scenarios?

15 A. I -- so two answers to that. 12:53:41

16 One is, my understanding is, in  
17 calculating unjust enrichment, they did not make  
18 any changes in their behavior. They, in fact,  
19 continued to use the sWAA-off -- the sWAA-off data.

20 To the extent that they would have been 12:54:02  
21 able to make a change, I'm not aware of any change  
22 that they would have been able to make that would  
23 have resulted in less profits to them.

24 Q. Less profits or more profits?

25 A. Well, I'm calculating unjust enrichment. 12:54:25

1 So if they -- if they were to have made less 12:54:26

2 profits, I would have had to deduct less here.

3 Q. Okay.

4 A. Maybe we should -- maybe we should

5 reframe the question, because -- 12:54:43

6 MR. LEE: Yeah.

7 THE DEPONENT: Maybe I'm -- maybe I'm

8 answering the wrong question there.

9 MR. LEE: I think you guys are talking

10 about two slightly different things. 12:54:50

11 Q. (By Mr. Santacana) So I understand that

12 your unjust enrichment opinion is effectively a

13 disgorgement of profits opinion, right?

14 A. That is correct.

15 Q. Okay. Does it take into account at all 12:54:59

16 what would have happened in the but-for world if,

17 at the start of the class period, Google had been

18 prohibited from using SWAA-off data for the

19 purposes that you find to be sources of profit?

20 A. I'm not -- so that is something I 12:55:38

21 considered. I'm not aware of anything that they

22 would have done -- that they did do or would have

23 done differently if they had been prohibited from

24 using that data.

25 So I'm not aware of any alternative, if 12:55:55

1 you will, that was available to Google. 12:55:57

2 Q. You've done consumer products damages  
3 cases before?

4 A. I have done damages cases where there  
5 were consumer products involved. 12:56:09

6 Q. So in, let's say -- let's just take the  
7 hypothetical that you are working on an all-natural  
8 juice consumer fraud case. The juice says on the  
9 label it's all natural. Turns out it's not. You  
10 are measuring the damages. Right? 12:56:27

11 Have you done anything like that?

12 A. No, I have not.

13 Q. Okay. So not any -- you haven't done,  
14 like, consumer fraud cases?

15 A. Correct. 12:56:36

16 Q. Okay. Are you familiar with the  
17 methodologies that go into account in measuring the  
18 difference between what the defendant gained in  
19 profit from a false representation and what it  
20 would have gained in the but-for world had the 12:56:47  
21 false representation been, instead, accurate?

22 A. I have a familiarity with it, but I'm  
23 not -- I have not done one of those cases.

24 Q. Okay. Did you consider anywhere in your  
25 opinion in this case the difference between what 12:57:09

1 Google would have gained in profit -- excuse me. 12:57:13

2 Let's start over.

3 Did you consider anywhere in your opinion  
4 in this case the difference between what Google  
5 earned in profit from the allegedly false 12:57:23

6 representation relating to SWAA and what it would  
7 have earned in a but-for world had Google not made  
8 the false representation or made the representation  
9 accurate?

10 MR. LEE: Objection to form. Misstates 12:57:41  
11 the claim in the case, the legal issues in the case  
12 and the methodology of the report.

13 THE DEPONENT: I guess you're going to  
14 have to reask that in a different way. I'm not  
15 quite understanding. 12:57:54

16 Q. (By Mr. Santacana) You understand the  
17 claim in the case is that the plaintiffs understand  
18 one thing from the SWAA button, but, in fact, it is  
19 alleged Google did another thing that deviates from  
20 their understanding, right? 12:58:07

21 A. Correct.

22 Q. And you are trying to measure the damage,  
23 in your unjust enrichment opinion at least, that  
24 the -- you're trying to measure the profits that  
25 Google gained thanks to its alleged misleading of 12:58:17

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1 those plaintiffs? 12:58:21

2 MR. LEE: Objection to form.

3 Mischaracterizes the claim.

4 THE DEPONENT: I think you're

5 generally -- that's generally somewhat accurate, 12:58:30

6 yes.

7 Q. (By Mr. Santacana) And to measure that,

8 you tried to measure the profits that Google earned

9 from its use of the data it got thanks to the

10 alleged misrepresentation, right? 12:58:43

11 A. That is correct.

12 Q. And the assumption baked into that

13 opinion that you have rendered is that had Google

14 not made the alleged misrepresentation but instead

15 told the truth, then it would not have been able to 12:58:57

16 use the data in question to earn a profit, right?

17 A. Yes.

18 Q. Did you ever consider that if Google had

19 not made the alleged misrepresentation but instead

20 told truth that it still would have been able to 12:59:10

21 use the data because the user may have turned, for

22 example, WAA on?

23 MR. LEE: Same objections.

24 Mischaracterizes the claim and the methodology.

25 Q. (By Mr. Santacana) Let me ask it a 12:59:42

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1 different way. I'll withdraw the question. 12:59:44

2 Why did you assume that if Google had  
3 disclosed to users at the start of the class period  
4 that even when they turned sWAA off, it will still  
5 use sWAA-off data to serve ads and measure 01:00:08  
6 conversions, that the consequence of that would be  
7 that Google would simply not receive the sWAA-off  
8 data?

9 The user will still see ads, right?

10 A. My understanding is that the user might 01:00:36  
11 still see ads.

12 Q. The user will still buy stuff sometimes,  
13 right?

14 A. That's true. But, for example, like in  
15 Scenario 2, they wouldn't be seeing Google Ads 01:00:46  
16 because Google wouldn't know to serve them.

17 Q. What do you mean "Google wouldn't know to  
18 serve them"?

19 A. Well, there would be -- my understanding,  
20 for example, in Scenario 2 is there would be no ad 01:00:59  
21 requests that Google would -- would receive.

22 Now, this is -- this is tech -- this is a  
23 technical area. I'm not -- I'm not 100 percent  
24 sure on the exact right terminology.

25 But my understanding is that under 01:01:12

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1 Scenario 2, which I think is an example that is 01:01:16  
2 illustrative to what you are asking me, is Google  
3 would not receive a signal to serve an ad, and so  
4 they would not know to serve an ad.

5 So if an ad were to be on that page, you 01:01:34  
6 said -- you said that they would just see an ad.  
7 If -- if that -- that would have to come from some  
8 different source.

9 Q. Couldn't Google just serve a randomly  
10 selected ad? 01:01:48

11 A. No.

12 Q. Why not?

13 A. Because Google wouldn't receive a signal  
14 to put an ad out in the first place.

15 Q. Why? 01:01:56

16 A. Because it wouldn't get the data.

17 Q. What data?

18 A. I -- you're asking me a technical  
19 question now at this point, where I -- I don't know  
20 technically what data that it needs to get to serve 01:02:08  
21 an ad.

22 My understanding is that it wouldn't  
23 receive that signal, so Google would not serve an  
24 ad.

25 Q. I see. 01:02:19

1 A. Someone else would have to serve that ad. 01:02:20

2 Or maybe it was just an ad that's just always on

3 that page, always on that app.

4 One thing is -- for me, it's like

5 4:00 o'clock. So I don't know if we could take a 01:02:31

6 lunch -- I know we've been going about an hour.

7 MR. SANTACANA: Of course.

8 THE DEPONENT: I don't want to take a

9 super long lunch break, but --

10 MR. SANTACANA: Yeah. Can I just ask one 01:02:38

11 or two more questions? And then, yeah, we should

12 take lunch.

13 THE DEPONENT: Sure.

14 MR. SANTACANA: It should be here.

15 MR. LEE: I think it's already here. 01:02:45

16 MR. SANTACANA: Okay.

17 MR. LEE: It was up there when we got up

18 there.

19 MR. SANTACANA: Oh, good.

20 Q. (By Mr. Santacana) So I think I 01:02:50

21 understand.

22 In rendering your unjust enrichment

23 opinion, one of the assumptions that you made was

24 that, for Scenario 2 at least, I guess, it would be

25 technologically infeasible for Google to serve ads 01:03:12



1 to apps on devices where the user had sWAA turned 01:03:15  
2 off.

3 Is that fair to say?

4 A. That is my understanding.

5 Q. So no part of your opinion takes into 01:03:26  
6 account the possibility that Google could serve ads  
7 by some technological means that do not engage in  
8 the alleged unlawful conduct?

9 A. That -- that's my understanding, that --  
10 that under Scenario 2, under that Scenario 2, they 01:03:47  
11 would not be able to.

12 Q. And Scenario 1, I think?

13 A. Well, under -- under Scenario 1, it's  
14 conversion -- that Scenario 1 relates to conversion  
15 tracking. So they wouldn't get the conversion 01:04:03  
16 tracking data, so they wouldn't have the ability to  
17 conversion track the way they do.

18 Q. Let's say that we live in that but-for  
19 world, where Google cannot receive the sWAA-off  
20 data at issue in the case. 01:04:22

21 Couldn't Google still serve golf club  
22 related ads in the PGA's mobile app without  
23 receiving any sWAA-off data about the user who is  
24 using it?

25 A. So my understanding in Scenario -- this 01:04:50

1 relates -- what you're now talking about is 01:04:52  
2 Scenario 2, because you're talking about the actual  
3 serving of an ad, not the conversion tracking  
4 data --  
5 Q. Okay. 01:05:00  
6 A. -- that is related.  
7 Q. I will accept that for now.  
8 A. In -- in Scenario 2, no, it would not be  
9 able to serve that ad.  
10 Q. Why not? 01:05:07  
11 A. Because it would not be technologically  
12 feasible to do that. It would not get -- you're --  
13 you're asking me a technical question why it would  
14 not be able to. I'm not 100 percent sure of the  
15 exact technical terms. 01:05:19  
16 But my understanding is that it would not  
17 get the signal -- nontechnical -- to serve the ad  
18 in the first place.  
19 Q. I'm almost done, and we'll take lunch.  
20 But I just want to make sure I understand you. 01:05:31  
21 Take a look at your report -- I just need  
22 a moment to find it.  
23 Paragraph 41.  
24 MR. LEE: Just let me get there. Hold  
25 on. 01:06:18

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1 THE DEPONENT: I'm at paragraph 41. 01:06:30

2 Q. (By Mr. Santacana) Okay. In paragraph  
3 41, you describe the Web & App Activity, or WAA  
4 setting, we've been discussing.

5 And you say that's a setting that's 01:06:44

6 "related to Google's collection and saving of a  
7 user's 'activity on Google sites and apps,  
8 including associated information like location, to  
9 give users faster searches, better  
10 recommendations,'" et cetera, et cetera. 01:06:58

11 And in paragraph 42, you describe sWAA,  
12 which is similar but applies to activity on sites,  
13 apps and devices that use Google services.

14 You with me so far?

15 A. I'm with you, yes. 01:07:17

16 Q. So what I'm trying to understand is, why  
17 can't the PGA contract with Google to serve  
18 golf-related ads in its app without Google ever  
19 saving a user's activity data from apps that use  
20 Google services? 01:07:38

21 Why didn't you consider that as a  
22 possibility?

23 MR. LEE: I'm a little confused.

24 Are you -- are you representing that  
25 that's -- or suggesting -- I don't -- I'm not 01:08:05

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```
1 | trying to pin, but I just want -- is it a 01:08:07
```

2 | hypothetical question you're asking? Or is it --

3 | are you representing that that's what Google does?

4 MR. SANTACANA: I don't even understand

5 | what you're asking me, but -- 01:08:16

6 MR. LEE: Can you ask the question again,

7 | then? Because I just want to make sure whether to

|   |                |
|---|----------------|
| 8 | object or not. |
|---|----------------|

9 Q. (By Mr. Santacana) Do you understand my

|    |           |          |
|----|-----------|----------|
| 10 | question? | 01:08:24 |
|----|-----------|----------|

11 A. Not really. I'm trying to understand --

12 I mean, I think we're talking about technical

13 issues here, and I want to make that sure I'm

|    |        |
|----|--------|
| 14 | not -- |
|----|--------|

|    |  |          |
|----|--|----------|
| 15 | Q. Yeah. Let's take it piece by piece. | 01:08:32 |
|----|--|----------|

16                    You told me that you believe it would be

|    |   |
|----|---|
| 17 | technologically infeasible for Google to serve golf |
|----|---|

18 club ads in the PGA without using sWAA-off data,

|    |        |
|----|--------|
| 19 | right? |
|----|--------|

|    |         |          |
|----|---------|----------|
| 20 | A. I -- | 01:08:49 |
|----|---------|----------|

21 Q. Or at least that's an assumption of your

|    |                    |
|----|--------------------|
| 22 | unjust enrichment? |
|----|--------------------|

23 A. That's -- that's an assumption that --

24 and I don't know how that works --

25 O. So I'm trying -- 01:08:57

1 A. -- from a technical perspective. 01:08:58

2 Q. I'm just trying to test that assumption a  
3 little bit to see if you considered that it might  
4 be more complicated than that.

5 For example, couldn't the PGA app ask 01:09:06  
6 Google to serve golf club-related ads in its app  
7 without ever involving a user's Web and app  
8 activity sWAA-off data?

9 MR. LEE: And my question is, are you  
10 suggesting that that is something that PGA does? 01:09:24

11 MR. SANTACANA: You can ask me during the  
12 lunch.

13 Q. (By Mr. Santacana) Go ahead and answer  
14 the question.

15 MR. LEE: Yeah, I object as improper 01:09:30  
16 hypothetical. Lack of foundation.

17 THE DEPONENT: I guess -- from my  
18 understanding for Scenario 2, I understand that  
19 that would not be technologically feasible to do.

20 Q. (By Mr. Santacana) Let's say that the 01:09:49  
21 Court rules that sWAA-off data is limited to data  
22 about a user. Okay?

23 MR. LEE: Objection. Vague.

24 Q. (By Mr. Santacana) Are you with me so  
25 far? 01:10:06

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1 A. I'm with you. 01:10:07

2 Q. It does not include, for example, data  
3 that PGA sends to Google about its own app so  
4 Google can select PGA-related ads. That would be  
5 outside scope. 01:10:18

6 A. Okay.

7 Q. In that scenario, would your unjust  
8 enrichment Scenario 2 opinion need to be altered?

9 A. Not that I'm aware of as I sit here.  
10 You're talking about a technical issue 01:10:40  
11 that I'd have to -- I'd have to think about, and I  
12 would also have to get technical input on. So I  
13 don't know the answer to that.

14 MR. LEE: And I didn't have a chance to  
15 object. Same objection. Improper hypothetical. 01:10:50  
16 There's two in there.

17 Q. (By Mr. Santacana) Well, what I am  
18 positing is that the Court rules that Google can  
19 serve what's called contextual advertising, which  
20 is ads that relate to the app in which the ad is 01:10:58  
21 being served, basically, without ever using  
22 sWAA-off data.

23 If you assume the Court rules that, then  
24 doesn't your but-for world need to be take into  
25 account that Google could have served such ads 01:11:14

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1 during the class period? 01:11:16

2 A. If you're asking me to assume something  
3 different than I understood, I would have to  
4 analyze that. I cannot sit here and answer that as  
5 I sit here. 01:11:28

6 MR. SANTACANA: Okay. We can take lunch.

7 THE VIDEOGRAPHER: This marks the end of  
8 Media No. 2. Off the record. The time is 1:11.

9 (Recess taken.)

10 THE VIDEOGRAPHER: This marks the 01:11:44  
11 beginning of Media No. 3 in the deposition of  
12 Michael Lasinski. We are back on the record. The  
13 time is 2:06.

14 Q. (By Mr. Santacana) Sir, when we left  
15 off, we were talking about your unjust enrichment 02:06:57  
16 opinion and the but-for world in which Google was  
17 prohibited from using SWAA-off data to serve ads.

18 Do you recall that?

19 A. Yes.

20 Q. I want to just understand a little more 02:07:16  
21 of that but-for scenario for a moment.

22 So as I understand what you're saying, in  
23 that but-for world, the users who have SWAA off  
24 would not be served any ads by Google in -- via  
25 AdMob or Ad Manager, right? 02:07:35

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1 A. That is my understanding, yes. 02:07:38

2 Q. And I guess what I'm curious about is  
3 what would happen, if that were the case, to the  
4 money that advertisers were devoting to placing ads  
5 on Google's Display Network if, as you say, Google 02:08:00  
6 could not serve any ads to sWAA-off users.

7 MR. LEE: Calls for speculation. Lack of  
8 foundation.

9 THE DEPONENT: I guess I'm not  
10 understanding what you're -- what you're trying to 02:08:22  
11 ask there.

12 Q. (By Mr. Santacana) I'll break it down.  
13 So Google makes money from placing ads,  
14 right?

15 A. In part, yes. 02:08:29

16 Q. That's what we talked about earlier.  
17 So an advertiser pays Google and expects  
18 that Google show ads to people in return, right?

19 A. That is their business model.

20 Q. So all of sudden now, Google says, "Sure 02:08:45  
21 we'll show ads to people, but we won't show any to  
22 sWAA-off users."

23 Right? Under your unjust enrichment  
24 theory.

25 A. Well, my -- my understanding is that you 02:08:58

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```
1 |         couldn't -- they would not be able to serve ads on          02:09:01
```

2 third-party app sites to sWAA-off users.

|   |           |
|---|-----------|
| 3 | Q. Right. |
|---|-----------|

4 So there's apps that have AdMob in them,

5 | right? 02:09:19

6 A. That is my understanding, yes.

7 Q. AdMob shows ads that Google serves,

|   |        |
|---|--------|
| 8 | right? |
|---|--------|

9           A.     That is my understanding.

|    |   |          |
|----|---|----------|
| 10 | Q. And then those ads were bought by some | 02:09:25 |
|----|---|----------|

11 other advertiser who said, "Can you please place

12       these ads on your Display Network?"

|    |        |
|----|--------|
| 13 | Right? |
|----|--------|

14           A.     That is my understanding.

|    |  |          |
|----|--|----------|
| 15 | Q. So Google says, all of a sudden, "We'll | 02:09:37 |
|----|--|----------|

16 still place your ads, but we can't place them in --

17 for any sWAA-off users. If the user is sWAA-off,

18 we can't show your ad to them."

19                    Are you with me?

20 | A. I understand what you're saying, yes. 02:09:55

21 Q. I think your opinion posits that the

22 advertiser would pay less than in a world where

23 they thought the sWAA-off user was going to receive

24 ads; is that fair to say?

|    |  |          |
|----|--|----------|
| 25 | A. The advertiser would pay less because | 02:10:14 |
|----|--|----------|

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1       they did not -- to Google. The advertiser would 02:10:16  
2       pay less to Google because Google did not -- would  
3       not serve an ad in those cases.

4 Q. But only to sWAA-off users. It would  
5 still serve ads to sWAA-on users and signed-out 02:10:27  
6 users, right?

7           A.     That is -- whether -- whether or not it  
8     did or it did not doesn't concern me, because I'm  
9     only concerned with sWAA-off users.  So what it  
10    does outside of that -- 02:10:40

|    |           |
|----|-----------|
| 11 | Q. Right. |
|----|-----------|

12 A. -- that's its business.

13 Q. So why would the advertiser pay Google  
14 less? Why wouldn't it pay Google the same amount  
15 to place ads, and the ads would just be shown to a 02:10:51  
16 different mix of people, namely, people who don't  
17 have sWAA turned off?

18 MR. LEE: Calls for speculation. Lack of  
19 foundation.

20 THE DEPONENT: They would -- they would 02:11:08  
21 pay them less because those ads that are currently  
22 being shown to sWAA-off users would not be shown to  
23 sWAA-off users. They may go to a different  
24 advertising firm or a different -- different  
25 company that could serve those ads, but they 02:11:25

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1 wouldn't go to Google. Google would not be able to 02:11:28  
2 serve those ads.

3 Q. (By Mr. Santacana) So remember when we  
4 were talking about the automated bid process?

5 A. I do. 02:11:40

6 Q. And you said the advertiser sets a bid.  
7 Then there's a competition for whose ad gets shown  
8 to people. You're not an expert in that, but  
9 somehow that bid gets translated into the delivery  
10 of advertising, right? 02:11:53

11 A. That is my understanding.

12 Q. So if the advertiser is engaging in the  
13 automated bidding process on Google's website,  
14 right, they have gone into the portal to do that,  
15 and there's a message there that says, "Hey, 02:12:09  
16 Advertiser, just take into account when you make  
17 your bid, your ads will only be shown to SWAA-on  
18 and signed-out users. If the user is SWAA-off, I  
19 will not show them your ad."

20 Okay? 02:12:25

21 A. Yes.

22 Q. That -- that would -- because that would  
23 be addressing -- that is your unjust enrichment  
24 but-for world, right?

25 A. It -- 02:12:33

1 MR. LEE: Hold on. 02:12:34  
2 Objection. Improper hypothetical. Calls  
3 for speculation. Lack of foundation.  
4 Go ahead.  
5 THE DEPONENT: If -- if you are asking if 02:12:43  
6 my but-for world in the case of the Scenario 2 is  
7 that Google would not serve ads to SWAA-off users  
8 as it relates to AdMob and Ad Manager, that portion  
9 is accurate.  
10 Q. (By Mr. Santacana) Okay. 02:13:01  
11 So Google tells the advertiser that. Is  
12 it your opinion that the advertiser's response is  
13 to lower their bid amount rather than to simply  
14 accept that their ads won't be shown to SWAA-off  
15 users but can still be shown to other users? 02:13:18  
16 MR. LEE: Same objections.  
17 THE DEPONENT: My -- my assumption is not  
18 that it would necessarily lower its bids in other  
19 situations. But in a situation where there's a  
20 SWAA-off user, then they don't get a signal that 02:13:38  
21 they would certainly serve less ads.  
22 Q. (By Mr. Santacana) So are you positing  
23 that advertisers are bidding per ad? They are  
24 saying, "To this user, show this ad; to that user,  
25 show that ad"? 02:14:11

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1 A. No. 02:14:12

2 Q. Okay. So you understand that the  
3 advertiser's saying to Google, "Here's a bucket of  
4 money; here's what I want to do with it." Right?

5 A. I do understand that. 02:14:19

6 Q. And there's lots of different ways they  
7 can prioritize. They can say, "I want to  
8 prioritize cost per click; I want you to prioritize  
9 cost per impression; I want you to prioritize  
10 conversions." Right? 02:14:27

11 A. Yes. That's -- I mean, but that's my  
12 understanding is they have the options available to  
13 them.

14 Q. Okay. So Nike is on Google's website.  
15 They're going to place some ads in apps. They want 02:14:38  
16 ads to go across Google's Display Network. And  
17 they say, "My budget is \$5,000 for this ad  
18 campaign, and I want to prioritize impressions."

19 Okay. With me?

20 A. I'm with you. 02:14:56

21 Q. Google says, "That sounds good. I'm  
22 going to place the ads for you. Just so you know,  
23 when I place them, no sWAA-off users will see this  
24 ad campaign."

25 Okay? 02:15:09

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1 A. I understand what you're saying. 02:15:09

2 Q. Is it your opinion that Nike would reduce  
3 the \$5,000 budget at that point?

4 MR. LEE: Same objections.

5 Go ahead. 02:15:22

6 THE DEPONENT: I would not -- I don't  
7 know that it would be a one by each advertiser. I  
8 didn't look at it by -- on advertiser by  
9 advertiser.

10 But certainly, if Nike had the ability to 02:15:32

11 place less ads, and Nike had -- I'm sorry; Nike --

12 Google had the ability to place less ads and were

13 to go to its advertisers and tell them you

14 cannot -- I can't serve ads to SWAA-off users, and

15 its -- it's a significant percentage of the number 02:15:54

16 of people that one would try to go to, yes, I do

17 think that there would be a lowering of the value

18 that Google receives.

19 Q. (By Mr. Santacana) Under your opinion,

20 there would have to be, right? Otherwise Google 02:16:18

21 would still make the same amount of revenue in that  
22 scenario?

23 A. Under -- under my opinion, yes, they

24 do -- they do receive less revenue and -- and,

25 ultimately, less profits. 02:16:31

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1 Q. And the mechanism by which they receive 02:16:33  
2 less revenue necessarily is that advertisers decide  
3 to spend less money?

4 A. They do decide -- they do spend less  
5 money, yes. 02:16:43

6 Q. Do you, in your report, analyze the  
7 factors that those advertisers take into account in  
8 the but-for world where they are deciding to spend  
9 less money thanks to the SWAA-off data prohibition?

10 A. I do not do advertiser-by-advertiser 02:17:18  
11 analysis in my report. I think it's -- I think,  
12 based on the information available to me, my report  
13 was -- is appropriate given the Scenario 2  
14 assumptions that there would be less ads that would  
15 be able to be served. 02:17:41

16 Q. Just so I'm clear, in Scenario 1, are you  
17 saying the ads can still be served, but the  
18 conversions cannot be measured; whereas Scenario 2,  
19 you're saying the ads can't be served at all?

20 A. Yes. In Scenario 1, the ads -- the ads 02:18:10  
21 can be -- the ads can be served.

22 Q. And so there, the source of profit that  
23 you're disgorging is the successful measurement of  
24 a conversion?

25 A. The -- what I'm actually -- the source of 02:18:31

1 value in that is actually Google's use of that 02:18:37  
2 information, Google's use of conversion tracking  
3 information, in its -- in its algorithms,  
4 machine-learning algorithms.

5 Q. Sorry. What do you mean by that? 02:18:57

6 A. So my understanding is that when Google  
7 tracks conversions, that -- that data goes into  
8 their -- goes into their algorithms that they use  
9 for, for example, autobidding. And then that data  
10 is important for them to be able to make those 02:19:24  
11 algorithms work.

12 And therefore -- and therefore, the --  
13 therefore, Google attributes revenue to its  
14 conversion tracking, its ability to conversion  
15 track and then provide that -- use that information 02:19:54  
16 in its own algorithms and bidding processes.

17 Q. Okay. We'll come back to that.

18 But just sticking with what we were just  
19 discussing, you assume, necessarily, that  
20 advertisers would lower the amount of money that 02:20:13  
21 they spend with Google in response to a prohibition  
22 on the use of SWAA-off data, right?

23 A. I believe that that's accurate, yes.

24 Q. And the amount of money by which those  
25 advertisers -- that's not a sentence. Let's try 02:20:35

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1 that again. 02:20:40

2 The difference that those advertisers  
3 spend with Google, that drop in the amount of money  
4 they're willing to spend, corresponds one-to-one  
5 with the amount of revenue Google makes for the 02:20:55  
6 service of sWAA-off user advertising, right?

7 A. For AdMob and for Ad Manager, that is  
8 correct.

9 Q. All things being equal, your assumption  
10 in your unjust enrichment Scenario 2 model is that, 02:21:21  
11 in all, Google's revenue will drop by the amount  
12 that it earns for serving ads to sWAA-off users  
13 because advertisers will choose to spend in total  
14 what they used to spend minus that amount?

15 A. Well, I mean, to be clear, that -- that 02:22:02  
16 is accurate, but then also Google would save  
17 traffic acquisition costs as well. So the  
18 profits -- the profits are not equal to the  
19 revenues in this case.

20 Q. Understood. Let's -- that's a very good 02:22:17  
21 point, and we'll come back to costs later. So I'll  
22 try and remember to stick to revenue for now --

23 A. Okay.

24 Q. -- in my questions.

25 So here's what I don't understand, then, 02:22:32

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1 about your assumptions behind Scenario 2. 02:22:34

2 If an advertiser wants to reach a certain  
3 number of people or achieve a certain number of  
4 conversions, why would they care whether Google  
5 will show their ad to all users or all users except 02:22:49  
6 sWAA-off users?

7 What difference does it make to the  
8 advertiser such that they will lower their budget  
9 by a corresponding amount?

10 A. Well, I mean, here's an example: If -- 02:23:13  
11 if an advertiser knows that it's not going to -- to  
12 reach a significant amount of people through  
13 Google's ad network -- you know, we know in -- in  
14 the most recent periods, it's 13 percent. It's  
15 like a 13 percent sWAA-off -- 13, 14, 15, percent 02:23:32  
16 sWAA-off percentage. That was earlier.

17 If one went to -- went to that advertiser  
18 and said, "We're not going to reach those people,"  
19 it is very likely that they would reduce -- reduce  
20 their spending and go to someone that could reach. 02:23:53  
21 That's -- that could reach those people.

22 Q. Why?

23 A. Because they know. Because Google is now  
24 telling them that our universe is incomplete.  
25 Google is now telling them that we don't have 02:24:11

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1 complete data; we don't have -- we don't have 02:24:14  
2 information on a significant portion of the -- of  
3 the people that could be purchasers. We can't get  
4 that information.

5 And so, therefore, you know, our model -- 02:24:25  
6 ultimately, our models are not as robust and they  
7 once were. Our reach is not as high as we have  
8 explained it to be.

9 I think that those would have both  
10 first-order -- I think the documents show that 02:24:47  
11 those would have both first-order impacts and  
12 second-order impacts. And first order relates to  
13 advertising revenue, and second order relates to  
14 their overall model being less efficient.

15 Q. The documents you are referring to are 02:25:07  
16 about SWAA or about GAP?

17 A. The document that I'm referring to in  
18 that particular case is there are emails about  
19 SWAA, there are emails about SWAA as it relates to  
20 the GAP analyses, and there are hypotheses in those 02:25:30  
21 emails that say we think that there would be both  
22 first-order impacts as well as second-order  
23 impacts.

24 Q. Hypotheses that were never studied,  
25 right? 02:25:52

A. I do not have access to actual studies  
that were done for SWAA. I don't know the answer  
to that, whether or not it was studied or not  
studied. It may have been studied but not produced  
in this case.

|   |                 |
|---|-----------------|
| 6 | Q. Fair enough. |
|---|-----------------|

7           A. But I don't have a SWAA study, if that's  
8    what you're asking, by Google.

9 Q. You do not know if those hypotheses were  
10 correct or not? 02:26:13

11           A.    I don't -- I don't know for sure if they  
12    were correct or not.  They seem like they would be  
13    correct, but I don't know for sure.

|    |  |          |
|----|--|----------|
| 14 | Q. And just to be clear, those were              |          |
| 15 | hypotheses about what would happen if more users | 02:26:39 |
| 16 | turned sWAA off?                                 |          |

17           A.    I -- I mean, I'd have to look at the  
18   document.  I think that there was an estimate of --  
19   no, I don't think it was necessarily more users.

20 I think there was a hypotheses, if I'm 02:26:50  
21 remembering correctly, like a mid 20 percent SWAA  
22 off, like a 25 percent SWAA off, is what -- is what  
23 they were asking about, what they were talking  
24 about in their discussions.

|    |   |          |
|----|---|----------|
| 25 | Q. Okay. We'll try and find the document. | 02:27:15 |
|----|---|----------|

1 Unless you happen to know which one it is. 02:27:21

2 A. I don't. I mean, that's just one  
3 document I can think of as I'm sitting here. There  
4 may be others.

5 THE DEPONENT: One thing I'm just going 02:27:29  
6 to mention before we -- it is getting --

7 MR. LEE: A little hot in here?

8 THE DEPONENT: It is going to get hot in  
9 here if they turned up the heat too much. I'm the  
10 one sitting in -- here in a tie, so... 02:27:38

11 (Discussion off the stenographic record.)

12 Q. (By Mr. Santacana) Okay. So back to the  
13 advertiser in the but-for world who is being told  
14 that some percentage of the audience will not be  
15 reached by the ad campaign. 02:28:16

16 And you say the natural response, then,  
17 is to lower the amount of money they are willing to  
18 spend with Google and perhaps reallocate some money  
19 to other advertising networks?

20 A. That -- that is one way of looking at it, 02:28:30  
21 yes.

22 Q. Did you measure the amount of impact that  
23 that disclosure would have on advertisers'  
24 decisions on where to allocate their advertising  
25 budgets? 02:28:50

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1 MR. LEE: What disclosure? 02:28:52

2 MR. SANTACANA: The disclosure by Google  
3 to the advertiser that their ads will not reach  
4 sWAA-off users.

5 MR. LEE: Okay. 02:29:01

6 Objection. Improper hypothetical. Calls  
7 for speculation. Lack of foundation.

8 THE DEPONENT: I mean, I'm not aware of  
9 any disclosure like that. I think -- I don't -- I  
10 don't know that any disclosure like that was made. 02:29:16  
11 So I'm -- I did not measure that.

12 Q. (By Mr. Santacana) So -- right.

13 What we're talking about is your but-for  
14 world where Google is prohibited from serving ads  
15 to sWAA-off users, right? 02:29:30

16 A. Well, that is -- that is the but-for  
17 world for Scenario 2.

18 Q. And in that world --

19 A. And let's just be clear: sWAA-off users  
20 on third-party apps. 02:29:41

21 Q. Yes.

22 And in that world, you posit that  
23 advertisers' response to that prohibition will be  
24 to lower their ad budget with Google because they  
25 will understand that their ads will not reach the 02:29:56

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1 entire potential audience. SWAA-off users can't be 02:29:59  
2 reached anymore, right?

3 A. That is right.

4 Q. Did you attempt to measure how much lower  
5 the ad budgets would be in response to those 02:30:10  
6 advertisers learning that they would not reach  
7 SWAA-off users?

8 MR. LEE: Same objections. Improper  
9 hypothetical. Calls for speculation. Lack of  
10 foundation. 02:30:24

11 THE DEPONENT: Again, I'm not aware of  
12 any -- you're -- you're asking me about a world in  
13 which that could have happened. I gave you an  
14 example. There may be others -- other examples in  
15 which advertisers would have -- would have spent 02:30:35  
16 less. That's just one example.

17 And so no, I did not attempt to -- to  
18 measure that. I don't think I needed to, because I  
19 think it's pretty clear that there would have been  
20 less spending, and I quantified that as such. 02:30:52

21 Q. (By Mr. Santacana) Well, that's my  
22 question.

23 You quantified it as such. How?

24 A. I -- exactly as I explained in my report.  
25 There's going to be less ad requests, so then less 02:31:08

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1 of an ability to serve those ads, and, therefore, 02:31:11  
2 advertisers would spend less.

3 Q. But the amount that you quantified it as  
4 is the exact amount that Google has earned from  
5 sWAA-off users. It assumes a one-for-one drop in 02:31:25  
6 budget, right?

7 A. For -- for Scenario 2, yes.

8 Q. So in Scenario 2, an advertiser that  
9 would have spent \$100 to reach the entire audience,  
10 if they are told that 10 percent of the audience 02:31:45  
11 won't be reached because they are sWAA-off, that  
12 advertiser chooses to spend \$90 instead.

13 Is that a fair characterization?

14 A. I think that that is -- yeah, I think  
15 that that's how the mechanics of it how would work. 02:32:04

16 Well, not -- not quite. Not quite.  
17 Because that -- that only relates to the ad --  
18 advertising percentage of it. They still would  
19 get -- Google is still earning money on the  
20 conversion element of it. 02:32:18

21 So I have to take it into consideration,  
22 it's -- the conversion information. But for  
23 Scenario 2, that is correct. That is accurate.

24 Q. So keeping just Scenario 2 in mind --

25 A. Correct. 02:32:32



1 Q. -- that's the scenario where Google can't 02:32:33  
2 serve ads. They can still serve ads in Scenario 1?  
3 A. That is my understanding, yes.  
4 Q. Okay. So keeping Scenario 2 in mind,  
5 Google can't serve ads, advertiser understands that 02:32:43  
6 10 percent of their audience has been excluded from  
7 the pool --  
8 A. More than that.  
9 Q. I'm just saying it's 10 -- let's say it's  
10 10 percent for a round number. 02:32:53  
11 A. Okay.  
12 Q. The SWAA-off people are excluded from the  
13 pool?  
14 A. Yes.  
15 Q. They lower their ad budget one for one by 02:32:58  
16 the percentage of people who are excluded from the  
17 pool? That's your opinion?  
18 A. No, not one for one by the percentage  
19 of -- not one for one by the people that were  
20 excluded from the pool. That's not right. 02:33:12  
21 Q. Okay. Why not?  
22 A. Because what -- what it is, actually, is  
23 it's those ads that were actually served to those  
24 people -- those ads that were actually served to  
25 those people, I'm actually lowering -- I'm actually 02:33:27

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1 looking at the actual unjust enrichment in that -- 02:33:32  
2 in that case.  
3 I'm actually looking at what they  
4 actually earned, what was actually paid to them in  
5 that case. 02:33:43  
6 Q. Right.  
7 A. And they -- in the but-for world, they  
8 would not have been able to serve those ads.  
9 They did serve those ads, so that's what  
10 they actually earned. That's my -- that's the 02:33:56  
11 calculation that I'm making.  
12 Q. So, then, is it fair to say that you are  
13 not trying to hypothesize how consumer and  
14 advertiser and Google behavior would have changed  
15 in the but-for world? Your task really was to 02:34:13  
16 measure the exact amount of profits Google did make  
17 from SWAA-off advertising?  
18 A. Yes. So in the but-for world, Google  
19 actually served those ads and actually profited  
20 from the information that it collected. And 02:34:35  
21 that's --  
22 Q. In the real world?  
23 A. In the real world, they did.  
24 In the but-for world, they should have  
25 not been able to. 02:34:43

1 And so in that world, they actually 02:34:44  
2 earned that money, and I am calculating the amount  
3 of profits that should have been disgorged.

4 That's the calculation. And maybe we  
5 were talking past each other earlier, because 02:34:54  
6 that's what I was telling you is what had happened.

7 Q. I think we were. So here's where I get  
8 confused.

9 You've done IP cases, lots of them,  
10 right? 02:35:06

11 A. Yes.

12 Q. And in those cases, sometimes you  
13 calculate a reasonable royalty, right?

14 A. Correct.

15 Q. And you calculate disgorgement of 02:35:17  
16 profits, right?

17 A. Correct.

18 Q. For example, in a patent case, where  
19 infringement is found on a component of a laptop,  
20 let's say the RAM chip, one calculation you might 02:35:28  
21 do is how much profit would the laptop seller have  
22 made if they could not have used that RAM chip as  
23 designed?

24 A. Okay.

25 Q. Right? 02:35:44

1 A. Okay. I'm following your hypothetical. 02:35:44

2 Q. Have you done that kind of an analysis  
3 before?

4 A. Yes.

5 Q. When you do that analysis, you start with 02:35:52  
6 how much revenue the laptop seller made, right?

7 A. Correct.

8 Q. You deduct costs?

9 A. Correct.

10 Q. And you take into account how consumer 02:36:10  
11 behavior would have changed in the but-for world  
12 where the laptop seller could not use that RAM  
13 chip, right?

14 A. Correct.

15 Q. And you take into account what the laptop 02:36:24  
16 seller could have done to design around the claims  
17 of the patent that were found to be infringed,  
18 right?

19 MR. LEE: Objection. Lack of foundation.

20 THE DEPONENT: I understand. I'm 02:36:37  
21 following your hypothetical.

22 Q. (By Mr. Santacana) Have you done that?

23 A. In cases?

24 MR. LEE: Objection.

25 Q. (By Mr. Santacana) Have you done an 02:36:42

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1 analysis like that before? 02:36:43

2 A. I mean, I'm -- I think I'm following it,  
3 but I think -- I think what you're talking about is  
4 the next-best alternative. But I'm not quite sure.

5 Q. In part, I am. Yes. 02:36:54

6 A. Okay.

7 Q. Did you take into account a next-best  
8 alternative here, in this case?

9 A. Well, my understanding in this case is  
10 that liability is based on what actually happened 02:37:05  
11 in the real world versus what should have happened  
12 in the but-for world.

13 And what actually happened in this world  
14 was Google actually used the -- collected and used  
15 the data. And in the but-for world, they should 02:37:22  
16 not have done that.

17 Q. Just like an infringer actually sold  
18 infringing products, and in the but-for world, they  
19 should not have done that?

20 A. I don't know if I can make that analogy, 02:37:34  
21 because I'm not a lawyer, and if it's just like the  
22 same thing.

23 That's -- that's a different standard.

24 Q. I'm asking --

25 A. There's a different legal -- 02:37:43

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1 Q. -- perspective. 02:37:44

2 A. -- different legal cases.

3 Q. I'm asking from your perspective as a  
4 damages expert who's done that countless times,  
5 right, you've considered what happens when a 02:37:50  
6 component of a product is infringing, right?

7 A. I have, yes.

8 Q. And when you do that analysis, you don't  
9 only take into account the profits made on the  
10 product that was sold and the costs involved in 02:38:06  
11 making the infringing component. You also take  
12 into account the possibility that the infringer  
13 could have used a different component, right?

14 A. That's one mechanism. That's one way to  
15 look at it, correct. 02:38:20

16 Q. So, for example, in the case, if Nike has  
17 a \$100 budget, and Google says you are not going to  
18 reach SWAA-off users through apps, Nike could  
19 reallocate the budget to other Google advertising  
20 properties, right? 02:38:31

21 MR. LEE: Calls for speculation.

22 THE DEPONENT: I think you're just --

23 MR. LEE: Hold on. Calls for  
24 speculation. Lack of foundation. Improper  
25 hypothetical. 02:38:40

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1 Go ahead. 02:38:40

2 THE DEPONENT: I mean, I think you're  
3 asking me to just speculate on what they would do.  
4 And I'm -- I didn't do that in my report. I'm not  
5 here to do that. 02:38:47

6 Q. (By Mr. Santacana) Okay.

7 A. What I'm doing is calculating what the  
8 actual but-for world would have been.

9 Q. Well, I don't -- but you're not, right?  
10 Because you're not trying to -- to hypothesize how 02:38:57  
11 the parties in the transaction would react to the  
12 constraint that you're placing on the market, which  
13 is Google cannot use SWAA-off data to serve ads.

14 You did not attempt to hypothesize, model  
15 or otherwise study how the parties in the 02:39:14  
16 transaction would react to that constraint, right?

17 A. My understanding -- my understanding is  
18 the but-for world is actually -- Google actually  
19 made a promise -- layman's terms -- made a promise,  
20 did not live up to promise, and then actually used 02:39:34  
21 the information and actually profited from that  
22 information -- from that data.

23 And I calculated the profits that they  
24 made from that data, you know, because I have  
25 assumed that liability -- assumed that there's 02:39:46

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1 liability. 02:39:50

2 Q. You've assumed there's a liability, and  
3 you've assumed that the parties to the advertising  
4 transaction would not have changed their behavior  
5 in response to the prohibition on the use of 02:40:03  
6 sWAA-off data for advertising?

7 A. I mean, no. My understanding of the  
8 but-for world is that they did profit from this  
9 information.

10 And my job is calculate how they profited 02:40:19  
11 from the information that they took in an  
12 ill-gotten way, not to speculate on what they could  
13 have done differently. And I'm not aware of  
14 anything that they could have done differently.

15 Q. With respect to Scenario 2? 02:40:40

16 A. Correct. I mean, I think that that's  
17 what we're talking about is Scenario 2.

18 Q. Yeah.

19 In effect, as I understand it, among  
20 other things, you assume that the sWAA button was 02:41:00  
21 meant to function as an ad blocker on Google's  
22 AdMob and Ad Manager SDKs; is that fair to say?

23 A. No, I -- I have not assumed that.

24 Q. Well, you're saying that -- that you  
25 assume that it's impossible for Google to serve ads 02:41:26

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1 through AdMob and Ad Manager when the user has sWAA 02:41:28  
2 off, right?  
3 A. For Scenario 2.  
4 Q. Right?  
5 A. Correct. 02:41:36  
6 Q. So in effect, what you're saying is that  
7 when the user turns sWAA off, it functions in part  
8 like an ad blocker. If they use an app that uses  
9 AdMob, where there might have been ad, now there's  
10 none? 02:41:50  
11 MR. LEE: Objection to form.  
12 THE DEPONENT: No, I -- I don't agree  
13 with that.  
14 Q. (By Mr. Santacana) Why not?  
15 A. Because I understand that Google would 02:42:04  
16 not be able to serve an ad, but I'm not aware that  
17 there wouldn't be some other way to -- to have an  
18 ad served to them.  
19 Q. I see. So the app developer could  
20 integrate a different advertising platform and so 02:42:18  
21 that for sWAA-off users, instead of showing a  
22 Google ad, they show a Facebook ad?  
23 A. I -- I'm not sure the mechanism for which  
24 it would happen, but I have not assumed that they  
25 would -- I have not assumed that they would -- that 02:42:32

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1 they've switched an ad blocker on. 02:42:37

2 I've assumed -- I've assumed that their  
3 data is not available for Google to serve an ad in  
4 Scenario 2.

5 Q. So it's not an ad blocker; it's a Google 02:42:49  
6 ad blocker?

7 MR. LEE: Objection to form.

8 THE DEPONENT: My understanding is, based  
9 on input given to me, is that Google would not be  
10 able to serve an ad in those situations. 02:43:06

11 Whether or not you want to call it an ad  
12 blocker, I've never called it that, but Google  
13 would not be able to serve an ad in those  
14 situations.

15 Q. (By Mr. Santacana) Okay. 02:43:19

16 Take a look at paragraph 87 of your  
17 report.

18 A. Okay.

19 Q. And then 88, please.

20 A. Okay. 02:45:17

21 Q. In 87 and 88, you identify a figure,  
22 82.2 percent, as equivalent to Google's  
23 determination of the proportion of App Display  
24 revenue from signed-in users as represented in the

25 [REDACTED] 02:45:37

1 Do you see what I'm talking about? 02:45:39

2 A. Yes, I do.

3 Q. What does it mean that 82.2 percent is  
4 the proportion of App Display revenue from  
5 signed-in, as that is used in the [REDACTED] [REDACTED]

6 [REDACTED]

7 MR. LEE: Objection.

8 I don't understand the question.

9 Answer if you know.

10 THE DEPONENT: Well, I don't -- I 02:46:10  
11 don't -- I, in fact, don't understand what you're  
12 trying to ask me, because I think it's...

13 Q. (By Mr. Santacana) I just don't  
14 understand the phrase. What does it mean?

15 A. Could you -- could you reask the 02:46:18  
16 question, then?

17 Q. Yes. Let me see if I can find -- take a  
18 look at paragraph 63.

19 A. Okay.

20 Q. So paragraph 63 is referring to Figure 02:46:59  
21 15, right?

22 A. Paragraph -- no. Paragraph 63 is  
23 referring to Schedule 15.1.

24 MR. LEE: I think he's referring to the  
25 first phrase in the 63. You're right, but... 02:47:24

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1 Q. (By Mr. Santacana) It says -- 02:47:27

2 MR. LEE: You're focusing -- you're both  
3 right.

4 Q. (By Mr. Santacana) Yeah. Not the  
5 footnote. I'm just saying it starts "as indicated 02:47:30  
6 in figure above," which I think means Figure 15?

7 A. I see. Yes. That is correct.

8 Q. Okay. And Figure 15, which you've titled  
9 "YouTube: GAP Consent Impact Summary," that's from  
10 the [REDACTED] [REDACTED] 02:47:45

11 A. Yes, it is.

12 Q. And as you understand it, that was a  
13 model created by Google and intended to measure the  
14 impact on Google's revenues from changes in the  
15 rate of consent for GAP? 02:48:01

16 A. That is correct. And in this figure, it  
17 relates to YouTube.

18 Q. In this figure, it relates to YouTube.  
19 And the 82.2 percent comes from where?

20 A. So underlying this presentation, there's 02:48:48  
21 a model, an Excel model.

22 Inside that Excel model, there are a  
23 number of cells that calculate signed-in and  
24 signed-out revenues for a variety of different  
25 Google products, if you will. 02:49:21

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1 And that Excel model that underlies this 02:49:26  
2 presentation, that Excel model calculates signed-in  
3 and signed-out revenue for App Display. And I use  
4 the information that's available for App Display.

5 So it's not -- it's not in Figure 15. 02:49:47  
6 It's actually in the model that underlies  
7 Figure 15, the Excel model.

8 Q. Okay. So in a moment, it should be  
9 available to you on that device as Exhibit 2.

10 (Exhibit 2 was marked for identification 02:50:04  
11 by the Court Reporter and is attached hereto.)

12 MR. SANTACANA: While we wait for it, I  
13 want to clarify something else about that  
14 paragraph 63.

15 Q. (By Mr. Santacana) Your goal in 02:50:18  
16 identifying this 82.2 percent figure was to  
17 determine the proportion of users who engage with  
18 AdMob and Ad Manager ads who are signed in.

19 Did I get that right?

20 A. Well, not -- no. 02:50:56

21 Q. No. Okay. Help me out.

22 A. So my goal is, since I'm doing a  
23 revenue-based analysis, is to identify the amount  
24 of signed-in and signed-out users' revenue.

25 Q. Period. 02:51:13

```

1      A.    I -- I need a revenue -- for my                                02:51:14
2      calculation, I want a revenue apportionment, not a
3      user apportionment.

```

4 Q. I see what you're saying. I see what  
5 you're saying. Right. 02:51:28

6 So you're trying to determine what  
7 percentage of Google's -- well, in paragraph 88,  
8 you're trying to determine what percentage of  
9 Google's App Promo revenue comes from signed-in  
10 users, which you conclude to be 82.2 percent? 02:51:44

11           A.     Just -- just to be clear, yes, but it  
12     actually is App Promo revenue net of traffic  
13     acquisition costs, because that's what I'm doing my  
14     analysis on.

|    |                 |          |
|----|-----------------|----------|
| 15 | Q. Fair enough. | 02:52:23 |
|----|-----------------|----------|

16 THE DEPONENT: Nothing has popped up  
17 here, by the way.

18 MR. LEE: Oh, you've got to hit the  
19 "refresh" button. See that one right there? You  
20 should get something. 02:52:33

21 THE DEPONENT: Okay.

22 MR. LEE: There's two things that popped  
23 up, and one doesn't have an exhibit number. I  
24 don't know if it's the same document or not.

|    |   |          |
|----|---|----------|
| 25 | (Discussion off the stenographic record.) | 02:52:43 |
|----|---|----------|

1 MR. LEE: That was very hard to deal with 02:52:54  
2 on the browser. So just take your time and make  
3 sure you scroll all the way through. Sometimes  
4 it's not always there.  
5 THE DEPONENT: Okay. Okay. I've got it 02:53:30  
6 open.  
7 Q. (By Mr. Santacana) Great. Okay.  
8 If you wouldn't mind just identifying for  
9 me the cell with the 82.2 percent just so we have  
10 on the record which one we are talking about. 02:53:45  
11 A. I think I have to point us to three.  
12 Q. Sure.  
13 A. So if you go the "Summary" tab.  
14 Q. I'm there.  
15 A. If you go the "Summary" tab, you see it 02:54:28  
16 lists "Product."  
17 Q. Yes.  
18 A. And it lists "App Display."  
19 Q. Yes.  
20 A. And then if you see, it says 82 percent 02:54:34  
21 signed in, 18 percent signed out.  
22 Q. Yes.  
23 A. I can't do this on this machine, I don't  
24 think. But I'm pretty sure...  
25 (Discussion off the stenographic record.) 02:54:52

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1 THE DEPONENT: As I'm clicking on these 02:54:54  
2 cells, I'm not seeing what I normally see with my  
3 Excel.

4 MR. LEE: Yeah. I think that's because  
5 it's in browser instead of the file. 02:54:59

6 THE DEPONENT: But if you go to the  
7 "Matrix" tab --  
8 (Discussion off the stenographic record.)

9 MR. SANTACANA: I'm there.

10 A. Okay. So if you go to the -- the 02:55:25  
11 "Matrix" tab, the first number that I'll point you  
12 to is B4 -- B43.

13 Q. (By Mr. Santacana) Okay.

14 A. You see it says "App Display" there?

15 Q. Yup. 02:55:54

16 A. That is signed out.

17 Q. Yup.

18 A. Net, signed-out net.

19 And then if you go to --

20 Q. B25? 02:56:12

21 A. -- B25. It's App Display, signed-in net.

22 And then if you make that -- if you

23 actually make that calculation, it -- it's

24 82-point -- I think it turns out to be

25 82.18 percent. 02:56:26



1 MR. SANTACANA: Can we go off for a 02:56:36  
2 second?  
3 MR. LEE: Yeah.  
4 THE VIDEOGRAPHER: This marks the end of  
5 Media No. 3. Off the record. The time is 2:56. 02:56:39  
6 (Recess taken.)  
7 THE VIDEOGRAPHER: This marks the  
8 beginning of Media No. 4 in the deposition of  
9 Michael Lasinski. We're back on the record. The  
10 time is 3:05. 03:06:11  
11 Q. (By Mr. Santacana) We were talking about  
12 that 82.2 percent figure. I think for now you can  
13 look back at your report to paragraph 88. I just  
14 want to make sure I understand the figure.  
15 You got it? 03:06:39  
16 A. Yes.  
17 Q. The 82.2 percent reflects the percentage  
18 of revenue on App Display at the point in time  
19 where that model was done that was signed-in  
20 revenue, right? 03:07:00  
21 A. Signed in versus signed out versus total.  
22 Yes, it does -- it does represent that at -- at the  
23 time that it was completed, the model was  
24 completed.  
25 But for completeness, however, the model 03:07:17

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1 actually ends up using that data point in each of 03:07:21  
2 the years that it projects forward to. So it  
3 doesn't just -- it doesn't change 82.2 percent for  
4 App Display in each of the following years that it  
5 models after that. It's a constant. 03:07:39

6 Q. Okay. I got it. All right.

7 So you read Knittel's report?

8 MR. LEE: Asked and answered.

9 MR. SANTACANA: It's a segue.

10 THE DEPONENT: I did. I did. I did. 03:08:06

11 MR. LEE: I couldn't even keep a straight  
12 face.

13 Go ahead.

14 THE DEPONENT: I did read Knittel's  
15 report, yes. 03:08:12

16 Q. (By Mr. Santacana) You saw that one of  
17 his criticisms of your analysis is that it did not  
18 take into account the impact of iOS 14 and its  
19 release in September of 2020.

20 Do you recall reading about that? 03:08:25

21 A. Yes, I do recall reading that about.

22 I don't agree with his conclusions, but I  
23 do recall reading about that.

24 Q. Tell me why.

25 A. So, first of all, just from a very 03:08:47

1 technical standpoint, I don't -- I understand that 03:08:50  
2 iOS 14 actually was not where there was any sort  
3 of -- this is a layperson's version of -- of the  
4 technical discussion.

5 iOS 14 is not where there was an actual 03:09:10  
6 change. I understand there was iOS14.5. So it --  
7 so the -- the date that he -- he says things should  
8 have changed, my understanding is it's actually  
9 later than that date.

10 Q. Okay. 03:09:29

11 A. Then, secondly, I understand that Google  
12 could have known what iOS 14.5 and beyond users  
13 sWAA status was. There's technically a way that  
14 they could have known that, technically a way that  
15 Google could have known that. 03:09:59

16 So that's the second thing.

17 And it's --

18 Q. Go ahead.

19 A. Go ahead.

20 Q. Go ahead. Finish. 03:10:11

21 A. And then the third is, just because  
22 Google, in -- in Knittel's world, if I understand  
23 it correctly, he's saying Google could not know or  
24 did not know the sWAA-off/sWAA-on status for iOS  
25 14 and beyond. 03:10:43

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1 That, in my opinion, does not alleviate 03:10:44  
2 Google's promise, if you will, to those that click  
3 sWAA off. They shouldn't be able to just put  
4 blinders on and say, oh, we couldn't know this  
5 information; therefore, we have no -- we have no 03:11:09  
6 duty to uphold someone's sWAA-off status.

7 Q. Okay. Well, I think you disclaimed  
8 expressing any expert opinion, at least, in the  
9 case about what Google or should or shouldn't do,  
10 right? 03:11:30

11 A. That is correct.

12 Q. Okay. So let's stick to -- let's stick  
13 to our hypotheticals and our assumptions and leave  
14 what Google should and shouldn't do out of it for a  
15 minute. 03:11:38

16 You said, as a technical matter, that  
17 Google could still have known after iOS 14.5 the  
18 sWAA status of its users who use iOS devices.

19 What is the basis for your understanding?

20 A. The basis of my understanding is that -- 03:11:54  
21 through discussions with Mr. Hochman.

22 Q. When did you have those discussions?

23 A. That was after I reviewed Mr. Knittel's  
24 report.

25 Q. Who was present for those discussions? 03:12:12

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1 A. I don't recall as I sit here. I know 03:12:17

2 Mr. Hochman and I were.

3 Q. Was there a lawyer?

|   |         |
|---|---------|
| 4 | A. Yes. |
|---|---------|

|   |         |          |
|---|---------|----------|
| 5 | Q. Who? | 03:12:23 |
|---|---------|----------|

6 A. Probably -- probably Alex.

|   |             |
|---|-------------|
| 7 | Q. Frawley? |
|---|-------------|

|   |                       |
|---|-----------------------|
| 8 | A. Frawley, probably. |
|---|-----------------------|

9 Q. So what did Mr. Hochman tell you about  
10 Google's ability to determine the sWAA status of 03:12:39  
11 iOS users after iOS 14.5?

12           A.     So my understanding is that there is a  
13       device -- some way to do some device-level  
14       information that Google could get that would enable  
15       them to determine whether or not the SWAA-on or                      03:12:58  
16       SWAA-off statuses were on.

17 Q. Do you have any further understanding  
18 other than what you just said?

19 A. No, it was -- it's technical. He -- he  
20 said it's possible they could have known. 03:13:14

|    |          |
|----|----------|
| 21 | Q. Okay. |
|----|----------|

22           A.     Meaning -- "they" meaning Google.

|    |                       |
|----|-----------------------|
| 23 | Q. Right. Understood. |
|----|-----------------------|

24 Did you read the named plaintiffs'

25 depositions in this case? 03:13:39

1           A. I flipped through them. I didn't read                         03:13:42  
2      them word for word, but I did flip through at least  
3      some of them.

4 Q. Would you agree that their own words is  
5 at least a useful data point in how consumers value 03:13:54  
6 their sWAA-off data?

7           A.    I -- I don't believe that that's  
8           necessarily probative, but I would have no reason  
9           to believe that it isn't something that one could  
10          look to. 03:14:28

11 Q. Did you do anything in this case to  
12 model, estimate or study how consumers would have  
13 responded at the start of the class period if  
14 Google had fully disclosed what Plaintiffs alleged  
15 it failed to disclose about sWAA? 03:14:57

16           A.    I did not do a consumer study, if that's  
17   what you're asking.  My understanding is -- from my  
18   job from a monetary -- from a monetary compensation  
19   standpoint is I have accepted the premise that  
20   Google didn't do that. 03:15:22

21 Q. So have you done anything to analyze, as  
22 an expert, what would have happened in the but-for  
23 world if Google had disclosed that sWAA off would  
24 work the way that it works according to  
25 Mr. Hochman? 03:15:51

1 MR. LEE: Objection. Form. Vague. 03:15:53

2 THE DEPONENT: I -- I did not do any. I  
3 did not do an analysis of that sort, if that's what  
4 you're asking me.

5 Q. (By Mr. Santacana) Okay. 03:16:20

6 A. I did not.

7 Q. Okay.

8 Returning to iOS 14 for a moment,  
9 assume for me that Google cannot decipher the sWAA  
10 status of a user on an iOS device who does not 03:17:12  
11 consent to it.

12 Okay?

13 A. Well, can you repeat that? Because now  
14 I've lost you.

15 Q. Assume that Google cannot decipher the 03:17:22  
16 sWAA status of a user on an iOS device who does not  
17 consent to that.

18 A. Are you -- are you specifying a sWAA-off  
19 user then?

20 Q. It's a sWAA-off user, but they do not 03:17:35  
21 consent to Google obtaining their device  
22 identifier.

23 And so I'm asking you to assume that, as  
24 a result, Google is disabled from understanding  
25 that user's sWAA status. 03:17:50

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1 A. Okay. 03:17:54

2 Q. Okay. Is it fair to say that for some of  
3 the conversions that you measure in Scenario 1 as  
4 unjust enrichment would have been conversions that  
5 were initiated or consummated by one of those users 03:18:12  
6 I just mentioned?

7 A. I don't -- I don't think so. I -- no.  
8 That would not -- that would not have come into my  
9 model.

10 Q. Why not? 03:19:05

11 A. Because I have sWAA-off data -- I have  
12 sWAA-off data from Google itself. And the starting  
13 point with -- the starting point of -- strike that  
14 answer. I've got to look at something to make sure  
15 that I'm right. 03:19:38

16 Q. Sure.

17 MR. LEE: Take your time.

18 THE DEPONENT: It would -- that would not  
19 have come into my analysis.

20 Q. (By Mr. Santacana) Please elaborate. 03:20:31

21 A. So if I understand your question  
22 correctly, you're asking me if Google could not  
23 know whether a user's sWAA status was off or not  
24 because of iOS 14.5 or later.

25 The starting point for every single one 03:20:57

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1 of my analyses is a measure of SWAA off. And, 03:20:59  
2 therefore, if Google did not know -- unless Google  
3 reported that -- reported the data erroneously, if  
4 Google did not know that it was off, it would not  
5 have reported it as off. 03:21:19

6 So that would be excluded from my  
7 calculations in every -- in every case.

8 Q. Which schedule are you looking at?

9 A. Well, if you look at -- if you look at  
10 Schedule 14.1. 03:21:41

11 Q. I'm there.

12 A. No. I pointed you to the wrong schedule.

13 If you look -- if you look at  
14 Schedule 13.1, this data is taken directly from  
15 Google's own representation of SWAA-off accounts. 03:22:13

16 Now, that -- that analysis then -- that  
17 analysis then, for example, goes into my App Promo  
18 signed-in SWAA-off revenue calculations.

19 For example, if you go to Schedule 2.2 of  
20 my analysis. So -- 03:22:50

21 Q. Got it.

22 MR. LEE: Wait. I think he's still --

23 THE DEPONENT: So just -- just -- so the  
24 very end, the very bottom of that schedule, it says  
25 "Share of Monthly Accounts with SWAA Off," and it 03:23:11

1 makes a multiplication. 03:23:17

2 So Google has to know that there is sWAA  
3 off.

4 Q. (By Mr. Santacana) So sticking with  
5 Schedule 2.2, and I see you're on the row "Share of 03:23:23  
6 Monthly Accounts with sWAA Off."

7 You say those percentages came from  
8 Google, right?

9 A. Well, the data that goes into those  
10 percentages came from Google. 03:23:36

11 Q. And that was -- sorry -- Schedule 13.1?

12 A. Yes.

13 Q. So let's stick with 13.1.

14 What you did was you took monthly active  
15 accounts for each year in the stub of 2016, and you 03:23:58  
16 performed a calculation of those with sWAA off as  
17 compared to those with sWAA enabled, and came up  
18 with your percentage of monthly accounts with sWAA  
19 off, right?

20 A. Correct. 03:24:18

21 Q. That last column, then, those percentages  
22 then get plugged into 2.2?

23 A. For example, yes. They go other places  
24 in my schedule as well.

25 Q. Yeah. 03:24:30

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1                   So do you understand the origin of this                   03:24:31  
2       "Monthly Active Accounts" data that you're relying  
3       on here in Schedule 13.1?

4           A.     Yes.

5           Q.     What is it?   03:24:42

6           A.     I mean, this is when you -- when you say  
7       "the origin," you mean that this is produced  
8       data -- data that was produced by Google.

9           Q.     So these are monthly accounts with sWAA  
10       enabled or turned off produced by Google from                   03:25:13  
11       Google's records of Google accounts, right?

12          A.     That's my understanding.

13          Q.     For each one of these years, there's more  
14       accounts than there are people in the U.S. because  
15       some people have more than one account, right?               03:25:29

16          A.     That's my understanding.

17          Q.     Okay.

18          A.     But -- but let's just be clear. For each  
19       of one of these years, there's not necessarily more  
20       than there are people in the U.S. In some years,               03:25:37  
21       there are less.

22                 I mean, if you look at the number of  
23       active accounts in 2016, there's 215 million  
24       accounts. I believe that there's more than  
25       215 million people in the U.S.                               03:25:50

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1 Q. I'm on Schedule 13.1. Where are you? 03:25:54

2 A. I'm -- oh, I'm on Schedule 13.2. 13.2 is  
3 the data that feeds this.

4 Q. Okay. This is very helpful. Thank you.

5 Yeah. So these are U.S. active accounts, 03:26:11  
6 and it's every month, which you rolled up into 13.1  
7 for -- by year, right?

8 A. Just for -- just for clarity's sake, it's  
9 every month with the exception of 9/1/2022 through  
10 12/1/2022. 03:26:35

11 Q. Okay.

12 A. And in those years, that data was not  
13 produced -- I'm sorry -- those months, that data  
14 was not produced. So then I held that data  
15 constant. 03:26:47

16 Q. Okay. Got it.

17 So what makes you think that these  
18 figures on number of accounts exclude iOS users?

19 A. I -- I -- no, I don't -- I don't think  
20 that they -- I don't think that the number of 03:27:13  
21 accounts exclude iOS users.

22 My understanding of your question -- my  
23 understanding of your question was, would iOS  
24 users come into -- would iOS users, after 14.5,  
25 come into my calculations, if -- if I understood 03:27:36

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1 your previous question correctly. 03:27:42

2 Q. Right.

3 A. Okay.

4 Q. You're -- to be clear, when you say

5 "calculations," what I mean is, are there 03:27:49

6 conversions that you say the revenue from which

7 should be disgorged that come from iOS 14.5 or

8 later users who did not consent to share their

9 identity with third parties.

10 But go ahead. 03:28:10

11 A. My understanding of -- of the

12 hypothetical is that -- the premise here is that

13 Google does not know whether their SWAA is off or

14 not.

15 Q. At the time that they are using an app on 03:28:29

16 their iOS device, of course Google knows for all

17 of its Google accounts if SWAA is on or off at any

18 given time, as you point out in 13.2.

19 A. Uh-huh.

20 Q. But in the moment where the user is using 03:28:45

21 an iOS device, and they happen to have a Google

22 account, and they happen to see an ad on an

23 AdMob-enabled app on an iOS device in iOS 15,

24 and they convert, are you proposing to disgorge

25 that conversion? 03:29:04

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1           A.     It seems like a very complex                                 03:29:53  
2     hypothetical. I'm not 100 percent sure if I can  
3     answer it as I sit here. I'd have -- I'd have to  
4     think about that more.

5 Q. Let me see if I can make it less 03:30:03  
6 complicated. Sorry.

7 I think you said the technical limitation  
8 at issue started with iOS 14.5?

9           A.     That is my understanding.

10 Q. Okay. So the Internet says that was 03:30:19  
11 released in April 2021. I don't know if that's  
12 true, but let's just assume for a minute that's  
13 true. Okay?

|    |   |          |
|----|---|----------|
| 14 | Assume further that, starting in April of           |          |
| 15 | 2021, though Google knows the sWAA status of their  | 03:30:38 |
| 16 | users in their Google account, when their users use |          |
| 17 | an iOS device, Google is disabled from knowing      |          |
| 18 | that they are a Google user and that they have a    |          |
| 19 | sWAA status at all by Apple's operating system.     |          |

|    |  |          |
|----|--|----------|
| 20 | In your calculations of conversion                 | 03:31:01 |
| 21 | measurement revenue that should be disgorged, are  |          |
| 22 | there -- is there conversion measurement revenue   |          |
| 23 | post April 2021 that you're proposing be disgorged |          |
| 24 | in the situation where Google doesn't know its     |          |
| 25 | users are using an iOS device or that they have a  | 03:31:18 |

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1 sWAA-off status? 03:31:30

2 A. Answering to the best of my ability as I  
3 sit here, that would be likely be in. But I'm  
4 not -- I can't just -- as I sit here, I'm not  
5 100 percent sure. That could take me, like, hours 03:31:46  
6 to figure out for sure if that's -- if that's right  
7 or not.

8 Q. Okay. To be clear, you did not attempt  
9 at any point in your analysis to exclude post iOS  
10 14 users' conversions from the denominator of 03:32:02  
11 conversion measurement revenue that you were  
12 looking at for disgorgement, right?

13 A. I -- that is correct. I did not.

14 Q. If the Court were to rule that Google was  
15 not obligated to honor the sWAA setting of a user 03:32:29  
16 on iOS who had not consented to be identified by  
17 a third party, like Google, wouldn't you need to  
18 cut out the conversions that would have been  
19 consummated in those situations from your  
20 Scenario 1 damages figure? 03:32:55

21 MR. LEE: Incomplete hypothetical.

22 Answer if you can.

23 THE DEPONENT: I -- I don't know the  
24 answer to that, because I can't -- because I would  
25 have -- I would have to go back. I would have to 03:33:14

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1 try to figure that out. I can't -- I did not cut 03:33:16  
2 out any iOS users. I said that they may likely  
3 be in, but I am not 100 percent sure. I would have  
4 to -- I would have to analyze that. I can't answer  
5 that as I sit here. 03:33:28

6 Q. (By Mr. Santacana) Why aren't you sure?  
7 If you didn't cut them out, then they must be in,  
8 right?

9 A. They are highly likely in, but I'm not --  
10 I would need to -- I just need to understand that 03:33:37  
11 hypothetical a little bit better to make sure that  
12 they were, in fact, in.

13 I don't -- I can't think of a reason as  
14 sit here that they're not in, but they may not be  
15 in. 03:33:48

16 The information is certainly available.  
17 I've made estimates as to iOS -- non- -- in my  
18 calculations, if one were to need to cut certain  
19 things out, one could do -- one could do that based  
20 on market share percentages and shared-in 03:34:05  
21 percentages. That's -- that's available if, in  
22 fact, it were necessary.

23 Q. Fair enough.

24 And as you know, you have an opportunity  
25 to review the transcript and correct errors. If 03:34:16

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1 you conclude that this testimony is erroneous, of 03:34:18  
2 course you can always correct that.

3 That's not a question. You're just --

4 A. Well, no. I'm not -- I'm not thinking  
5 that any of my testimony is erroneous. 03:34:29

6 Q. I know. No, no, no. I know.

7 I'm saying, you'd need you hours to check  
8 to be sure. So if you choose to take the time to  
9 check and conclude that what you've just said is  
10 wrong, you will have a chance to correct that. So 03:34:41  
11 you don't need to be worried about it right now.

12 MR. LEE: Yeah, he's not trying to trick  
13 you or anything.

14 THE DEPONENT: No, no, no. No. I'm just  
15 saying -- I'm just saying the hypothetical to begin 03:34:50  
16 with, my understanding is not -- is not accurate  
17 because I understand that Google knows how to check  
18 or has the ability to check their -- the SWAA  
19 status. But --

20 Q. (By Mr. Santacana) Well, let me -- 03:35:06

21 A. But you're saying if they didn't check,  
22 and they weren't allowed to check, then I would  
23 need to -- I'd need to analyze that.

24 Q. Yeah.

25 So that's -- all I'm saying is, you think 03:35:16

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1 it's highly likely you included that. That's fine. 03:35:17  
2 I understand you think it should be included.  
3 I'm just saying, if later you conclude  
4 that you did deduct it somehow -- you counted for  
5 it in some way or the numbers you used 03:35:30  
6 automatically accounted for it -- you'll have a  
7 chance to put that on the record.  
8 A. I understand that.  
9 Q. Okay. All right. Let's switch gears for  
10 a sec. 03:35:45  
11 So you used these percentage in --  
12 A. Can you just -- now what we are talking  
13 about, these percentage here now?  
14 Q. In Schedule 13.1.  
15 A. Okay. 03:35:57  
16 Q. Is what I was about to say.  
17 To apply a discount in Schedule 2.2 from  
18 signed-in App Promo revenue net of acquisition  
19 costs, from that, you discount by the share of  
20 monthly accounts with sWAA off, right? 03:36:43  
21 A. Yes.  
22 Q. You were provided with other measurements  
23 in this case and calculations relating to the  
24 proportion of online traffic that is WAA-off and  
25 sWAA-off traffic, correct? 03:37:02

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1 A. I think -- I think you're talking about 03:37:08  
2 an interrogatory response.

3 Q. I am.

4 A. Yes, I know -- I know the document that  
5 you're talking about. 03:37:14

6 Q. Did you review that document in preparing  
7 your expert opinion?

8 A. Yes.

9 Q. Why didn't you rely on it in estimating  
10 the swaa-off share of App Promo revenue? 03:37:32

11 A. If it's the document that I'm thinking  
12 of, that document is riddled with erroneous  
13 information.

14 If -- I believe that it's a random -- it  
15 purports itself to be a random sample of a certain 03:37:53  
16 number of days over the period -- over the period.

17 It has -- and, again, I'm going from  
18 memory here. But it has certain situations where I  
19 believe it said that swaa-on was 100 percent. It's  
20 got a lot of null values in it. And so that data 03:38:12  
21 ultimately is, in my opinion, very suspect.

22 Whereas this data here that I'm relying  
23 upon seems like it came from a more reliable source  
24 given the nature of the information that was  
25 provided, as well as the consistency and -- the 03:38:38

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1 consistency of the data and the expectations one 03:38:46  
2 would have from reviewing an analysis like -- like  
3 this.

4 Q. So as I understand it, in a nutshell, you  
5 found the monthly accounts with sWAA-off data to be 03:39:07  
6 more complete and reliable than the WAA-off traffic  
7 information that was provided in the interrogatory?

8 A. Yes, that is -- that is correct.

9 Q. Those two sets of data were measuring  
10 different things, fair to say, right? 03:39:28

11 MR. LEE: Objection to form.

12 THE DEPONENT: Yeah, they -- they were  
13 measuring different things to some extent, yes.  
14 One was measuring users, if that's what you're  
15 talking about, and one was measuring traffic. 03:39:49

16 Q. (By Mr. Santacana) If the interrogatory  
17 data you're referring to -- one second.

18 MR. SANTACANA: I'm just going to mark it  
19 to make this easier.

20 (Exhibit 3 was marked for identification 03:40:10  
21 by the Court Reporter and is attached hereto.)

22 Q. (By Mr. Santacana) But while we wait for  
23 that, if the -- do you at least agree with  
24 Mr. Knittel that if you had an accurate and  
25 reliable measure of the share of ad traffic that 03:40:31

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1 was sWAA-off traffic that that would be a better 03:40:34  
2 way to discount App Promo revenue in Schedule 2.2  
3 than the way you did it?

4 MR. LEE: Objection to form.

5 THE DEPONENT: Well, no. 03:40:51

6 Q. (By Mr. Santacana) Why not?

7 A. Well, in my -- the way that I did it, I  
8 relied on the most reliable data. And I understand  
9 the hypothetical to be, if this other data that  
10 you're saying that may pop up at some point were 03:41:12  
11 more reliable, would -- would one use that.

12 I don't know the answer to -- to how much  
13 more reliable it's going to be. I don't know if  
14 it's going to be as reliable as this data.

15 I do know that, in fact, there are other 03:41:28  
16 measures in the record which seem to indicate that  
17 WAA-off/sWAA-off users or WAA-off users are -- had  
18 about the same amount of traffic or maybe even a  
19 little bit more traffic than WAA-off users.

20 MR. LEE: Than WAA-on users? 03:41:46

21 THE DEPONENT: Than WAA-on users.

22 And so this data -- this data here I know  
23 is -- is reliable. And so -- and coupled with the  
24 fact that I've seen those other documents in the  
25 record, I'm comfortable using this data. 03:42:05

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1           If there were other traffic data that's           03:42:09  
2       in the record that I viewed to be reliable, that's  
3       something I'd have to look. But I don't know if it  
4       would be as reliable or more -- I'd just have to  
5       understand that.                                       03:42:19

6           And -- and I don't have that information  
7       because there was no other data in the record  
8       related to traffic.

9           Q.     (By Mr. Santacana) Look at paragraph 89  
10       of your report.                                       03:42:32

11           You there?

12           A.     Yes.

13           Q.     This is the paragraph of your report  
14       where you discuss the apportionment factor that you  
15       applied for SWAA-off users which came from Schedule       03:43:03  
16       13.1, right?

17           A.     Yes.

18           Q.     In the Footnote 166 --

19           A.     Yes.

20           Q.     -- you say, "As detailed on schedule       03:43:18  
21       13.1, I determined the average share of SWAA-off  
22       accounts for each annual period." [as read]

23           There's a parenthetical.

24           "The apportionment factor for 2022  
25       reflects monthly data," et cetera, et cetera,       03:43:36

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1 et cetera. 03:43:37

2 You describe the calculation.

3 A. Yes.

4 Q. In this footnote and in this

5 paragraph 89, you do not discuss the other 03:43:43

6 documents you were just referencing relating to the

7 proportion of ads traffic that is SWAA-off traffic,

8 right?

9 A. Relative to SWAA on?

10 Q. Yes. 03:44:05

11 A. I don't, no. That's correct.

12 Q. Do you discuss those anywhere in this

13 report?

14 A. I don't know that -- I don't know that I

15 do. 03:44:19

16 Q. Did you rely on those documents that you

17 were just talking about that discuss SWAA-on and

18 SWAA-off traffic shares in rendering your opinion

19 about how much of a discount you should apply to

20 App Promo revenue for SWAA-off traffic? 03:44:38

21 A. I don't know that I relied on those

22 documents.

23 Q. If you had relied on them, wouldn't you

24 have cited them here?

25 A. I would have cited them -- if I had 03:44:51

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1       relied on them, then I would have cited them in my                   03:44:52  
2       report, or at least I would have attempted to.  
3               I try to be as complete with documents  
4       that I rely upon --  
5           Q.    So is it --   03:45:02  
6           A.    -- for this analysis.  
7           Q.    Is it fair to say that those documents  
8       did not form the basis of your conclusion that  
9       these apportionment factors in Figure 21 for the  
10      adjusted share of monthly accounts with SWAA off               03:45:12  
11      were accurate?  
12               I can try it again.  
13           A.    Yeah, I'm not quite sure now what you're  
14      asking.  
15           Q.    Is it fair to say that those documents               03:45:31  
16      did not form the basis of the -- strike that.  
17               Let me try it a completely different way.  
18               I'm looking at page 32 of your report,  
19      paragraph 89, 90, Figure 21, the footnotes.  
20               This is where you conclude what                   03:45:57  
21      apportionment factor to apply App Promo revenue to  
22      adjust for SWAA-off users, right? SWAA-off  
23      revenue, I should say.  
24           A.    This is where I write about what I --  
25      where I write about it.                                       03:46:16

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1 Q. This is where you explain your reasoning? 03:46:17

2 A. That is correct.

3 Q. And in that explanation, you do not say  
4 that your conclusion is supported by other  
5 documents other than the ones cited here, right? 03:46:27

6 A. That is accurate. I do not say that in  
7 that particular -- in those particular paragraphs.  
8 Those other documents did not go specifically into  
9 my calculations.

10 Q. Fair enough. 03:47:23

11 As a conceptual matter, your goal in  
12 paragraph 89 and the supporting schedules is to  
13 determine the proportion of Google's App Promo  
14 revenue attributable to sWAA-off users, right?

15 A. To -- attributable to -- yeah, signed-in 03:47:50  
16 sWAA-off users, net of traffic acquisition costs.  
17 That's accurate.

18 Q. Is it fair to say that an assumption of  
19 your conclusion in paragraph 89 is that sWAA-off  
20 and sWAA-on users do not differ materially in how 03:48:08  
21 they interact with the Internet or with ads?

22 A. As I sit here, I think that that's fair  
23 to say. I haven't made an adjustment for any  
24 material differences between WAA-off or sWAA-off  
25 users as it relates to revenue for App Promo or for 03:49:32

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1 any of the other calculations that I have made, 03:49:36  
2 with the exception of what we're just talking about  
3 here.

4 Q. Take a look at Figure 15 of your report,  
5 the [REDACTED] [REDACTED] we've been discussing. 03:49:51  
6 There's a note in a black box on that slide that  
7 you rely on.

8 Would you just read that into the record  
9 for me?

10 A. "Note: This data is based on an 03:50:11  
11 assumption of linear distribution. However,  
12 initial data indicates that heavy year-to-date  
13 users are more like likely to consent (see  
14 following slide). Therefore this data most likely  
15 overstates the impact." [as read] 03:50:28

16 Q. And just one correction. The "YT" there,  
17 you're sure that that refers to year to date as  
18 opposed to YouTube?

19 A. I am sorry. Yes. Heavy -- I should  
20 just -- let me reread it. 03:50:42

21 "Note: This data is based on an  
22 assumption of linear distribution. However,  
23 initial data indicates that heavy YT users are more  
24 likely to consent (see following slide). Therefore  
25 this data most likely over states the impact." 03:50:57

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1 Q. And the following slide of that 03:51:06  
2 document -- well, let me -- strike that.

3 Do you have any basis to dispute that  
4 note on that slide relating to the conclusion that  
5 heavy YouTube users are more likely to consent to 03:51:17  
6 GAP?

7 A. No, I don't have a basis to disagree with  
8 that.

9 Q. So it is at least possible that, in the  
10 context of this case, when we're talking about 03:51:28  
11 sWAA-on and -off users that their usage patterns  
12 may also differ depending on which type of user  
13 they are?

14 A. Based on the data I saw that -- it's not  
15 accurate -- that it would -- they do not differ. 03:51:48

16 Q. What data is that?

17 A. There was -- there was a document, and I  
18 don't -- I don't recall that document. There was a  
19 document, though, that seemed to indicate that  
20 traffic -- that sWAA-off traffic was similar to 03:52:06  
21 sWAA-on traffic, at least for certain periods.

22 Q. Ads traffic or Internet traffic or  
23 analytics traffic? What kind of traffic?

24 A. I don't recall as I sit here.

25 Q. Okay. Ads traffic would be the relevant 03:52:31

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1 one, right? 03:52:33

2 A. I would think that they would be related.  
3 Ads traffic and app traffic would be related.

4 Q. But ads traffic is what you'd really want  
5 to know, right? 03:52:49

6 A. I think that's the most accurate, yes.

7 Q. Because in effect what you're trying to  
8 do is figure out how much of Google's advertising  
9 revenue is coming from sWAA-off users. If you  
10 would wave a magic wand and know that, that's the 03:53:08  
11 number you would use?

12 A. How much their advertising revenue or --  
13 and/or conversion tracking revenue that relates to  
14 advertising, yes. If I knew that number, that's  
15 the number I'm trying to accurately calculate. 03:53:28

16 Q. Okay. And, again, you don't recall which  
17 document you're referring to that lead you to  
18 believe that sWAA-on and sWAA-off users have  
19 similar --

20 A. No. 03:53:43

21 Q. -- quantities of traffic?

22 A. I -- I can't recall the Bates number. I  
23 can't recall it off the top of my head, no.

24 Q. All right. Take a look at Exhibit 3 for  
25 me. 03:53:57

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1 A. I'm there. 03:54:20  
2 MR. LEE: Page 3?  
3 MR. SANTACANA: I'm on page 16,  
4 Exhibit 3.  
5 MR. LEE: Got it. Thanks. 03:54:29  
6 MR. SANTACANA: Let me know when you're  
7 there.  
8 MR. LEE: Just give me a second.  
9 THE DEPONENT: Page 16, you said?  
10 Q. (By Mr. Santacana) Yup. 03:54:47  
11 A. Okay. Okay. I'm there.  
12 Q. Okay. Here you see the table "ACi WAA  
13 Opt-out (SampledAdEventsQueries) - Impressions."  
14 A. Yes.  
15 Q. And at the end of the table, which is on 03:55:30  
16 page 17, just to take the -- the final number, May  
17 2022, in the column "WAA Opt-out Rate on Google  
18 Display Advertising Stack," it's 1.57 percent,  
19 right?  
20 A. It is, yes. 03:55:53  
21 Q. And in your corresponding measurement for  
22 2022, your -- actually, let me just pause there for  
23 a second.  
24 Keep scrolling to -- I think this is  
25 missing something. 03:56:24

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1 In any case, that's the WAA opt-out rate 03:56:27  
2 according to this data. Your corresponding number  
3 for 2022 for sWAA opt-out was 13 percent, right,  
4 and change? 13.87 percent.

5 A. If you're asking me does this number say 03:57:05  
6 1.57 percent, this relates to WAA and not sWAA.

7 Q. Yes. I'm getting you the sWAA one in a  
8 moment?

9 A. So that's -- it's not -- I don't have a  
10 corresponding number to this in my analysis. 03:57:18

11 Q. I see. Okay.

12 Let's get the other one, then, and we'll  
13 look at that one.

14 MR. LEE: Mike, how are you feeling in  
15 terms of energy? Do you need to stretch your legs? 03:58:03  
16 We've been going about 55 minutes.

17 THE DEPONENT: Yeah, I mean, I think we  
18 just took that one short break. So I guess soon, I  
19 wouldn't mind taking a break.

20 And unfortunately, it's warming back up 03:58:10  
21 in here again too.

22 MR. LEE: That's sort of what I was  
23 thinking is it's just -- some fresh air outside.

24 MR. SANTACANA: Let's take a break.

25 MR. LEE: I can sense you're getting 03:58:21

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1 warm. 03:58:23

2 THE VIDEOGRAPHER: This marks the end of

3 Media No. 4. Off the record. The time is 3:57.

4 (Recess taken.)

5 THE VIDEOGRAPHER: This marks the 04:06:47

6 beginning of Media No. 5 in the deposition of

7 Michael Lasinski. We are back on the record. The

8 time is 4:06.

9 (Exhibit 4 was marked for identification

10 by the Court Reporter and is attached hereto.) 04:06:54

11 Q. (By Mr. Santacana) Okay. Take a look at

12 Exhibit 4.

13 A. Okay.

14 Q. So the swAA figures start at page 21,

15 U.S. only swAA opt-out. 04:07:29

16 A. Page 21?

17 Q. Yup. And the numbers really are at the

18 end of the table.

19 A. Okay.

20 Q. Okay. So back to that question I was 04:08:53

21 asking earlier. You see here, May 2022, "swAA

22 Opt-out Rate on Google Display Advertising Stack,"

23 9.39 percent.

24 Do you see where I'm at?

25 A. I do see that, yes. 04:09:11

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1 Q. That number, if it were accurate, would 04:09:13  
2 correspond to the 13.87 percent in your report at  
3 Figure 21?

4 A. No, it would not.

5 Q. Why not? 04:09:33

6 A. I mean, I think if I'm -- if I understand  
7 this data correctly, this is SWAA opt-out rate on  
8 the advertising stack -- I think -- I think, if I  
9 understand this correctly, what -- what you're  
10 asking here, is would that replace my 04:10:03  
11 13-point-some -- some-odd percent.

12 Q. Yeah.

13 A. Is that what you're asking?

14 Q. Yeah.

15 A. I mean, if one were just to 04:10:14  
16 mathematically change this, I think what you would  
17 have to do here is -- I'm just going to be sure.

18 I think -- I think what you would have to  
19 do is also get rid of the share of revenue from  
20 signed-in users deduction, because I don't think 04:10:56  
21 that this information calculates a signed-in cut,  
22 if I understand it correctly.

23 Q. I think I understand what you're saying.

24 You think the denominator from which the  
25 9.39 percent in Exhibit 4 on page 23 was calculated 04:11:24

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1 includes signed-out ad impressions? 04:11:29

2 A. Right.

3 Q. Okay.

4 A. So you would have to eliminate that

5 signed -- it's my understanding of this data, if I 04:11:38

6 understand it correctly -- and it's been a while

7 since I've tried to analyze it. But my

8 understanding is that this would actually

9 include -- the denominator includes signed out.

10 Q. Yeah. 04:11:54

11 A. So it would double count it if you had

12 both.

13 Q. Okay. I think I understand what you're

14 saying. That's very helpful.

15 All right. Let's switch gears. Let's 04:12:09

16 talk about conversion measurement for a minute.

17 I think you said earlier that -- I think

18 you distinguished earlier revenue that Google makes

19 from placing advertising from revenue that Google

20 makes from conversion measurement. 04:12:28

21 Is that -- did I mishear you?

22 A. No, I think that there are -- there is --

23 there are distinct revenue pockets.

24 Q. What is the difference between those two

25 revenue pockets? 04:12:44

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A. What I understand is that there are situations in which Google charges based on a specific conversion event, an actual conversion.

4 And then my -- I also understand that  
5 Google uses conversion tracking information to 04:13:01  
6 inform its algorithms that it uses in its analysis,  
7 if you will, for bidding for ads, advertisers  
8 bidding for ads.

9 Q. In what situations does Google charge  
10 based on a specific conversion event? 04:13:32

11           A.     My -- my understanding is that there  
12       are -- my understanding is that there are certain  
13       situations where advertisers can pay for their  
14       campaigns when customers actually convert on the  
15       app's -- on the apps's website or the app.

04:14:37

16 Q. What are you reading from there?

17           A.    I'm reading from my own report, and I'm  
18   on page 9.

|    |    |       |       |
|----|----|-------|-------|
| 19 | Q. | Okay. | Okay. |
|----|----|-------|-------|

20                   On page 9, at the top, this is the                   04:15:08

21       tail-end of paragraph 23, you say "Advertisers can

22       choose to finance their campaigns based on

23       conversions, paying Google 'when customers convert

24       on the advertiser's website or app.'"

|    |   |          |
|----|---|----------|
| 25 | And the phrase -- what I should have said | 04:15:24 |
|----|---|----------|

1 is "paying Google," quote, when customers convert 04:15:31  
2 on the advertiser's website or app, closed quote.

3 And there, you are quoting a Google Ads  
4 help page titled "Use pay for conversions in  
5 Display campaigns," right? 04:15:46

6 A. That is correct.

7 Q. And it's on that basis that -- that you  
8 just testified that you understand that there are  
9 certain situations where advertisers can pay for  
10 campaigns when customers actually convert on the 04:15:59  
11 app?

12 A. Yeah, that basis as well as there are  
13 other documents in the case that seem to indicate  
14 that.

15 Q. One question I have is, do you know the 04:16:09  
16 extent to which that is possible for App Promo  
17 campaigns?

18 A. I do not.

19 Q. So the denominator of revenue that you  
20 use for Scenario 1, which is the App Promo revenue 04:16:44  
21 scenario, is the full revenue from App Promo,  
22 right?

23 A. Yes. Yes.

24 Q. And then -- and then you deduct from that  
25 a number of things to account for signed in, SWAA 04:16:57

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1 off, costs, et cetera? 04:17:00

2 A. That is correct.

3 Q. Did you make any deduction for App Promo  
4 campaigns where the advertiser does not pay per  
5 conversion? 04:17:09

6 A. No, I did not. I did not need to.

7 Q. Why not?

8 A. Because when I made my final deduction,  
9 that -- I did not need to make a deduction for that  
10 because the information I used would have -- the 04:17:27  
11 information I used would not have required that  
12 deduction.

13 Q. Why not?

14 Was the information you used limited to  
15 pay-per-conversion campaigns? 04:17:46

16 A. No.

17 Q. So was there something in the information  
18 you used that helped you limit your revenue  
19 denominator to pay-for-conversion campaigns?

20 A. No, because I used -- in my calculation, 04:18:03  
21 I actually used the share of revenue attributable  
22 to conversion-type bids, not conversion -- not  
23 pay-for-conversion campaigns.

24 Q. What are you reading from?

25 A. I'm reading from Schedule 2.1. 04:18:19

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1 Q. Okay. So you're referring to the step in 04:18:28  
2 your analysis where you discounted App Promo  
3 revenue to account for the proportion of App Promo  
4 revenue where the conversions were measured by  
5 Google Analytics for Firebase as opposed to some 04:18:42  
6 other conversion measurement tool?

7 A. That were attributable to that, yes.

8 Q. And sorry. Which schedule?

9 A. That's Schedule 2.1.

10 Q. Sorry. One second. 04:19:03

11 And in Schedule 2.1, what you were just  
12 reading off was "Share of Revenue Attributable to  
13 Conversion Types Bid Against GA4F," right?

14 A. That is correct, yes.

15 Q. Which is -- the origin of which is 04:19:31  
16 Google's "Supplemental Response to Interrogatory  
17 17" at pages 15 and 16?

18 A. Correct.

19 Q. Okay. Let's take a look at that. So  
20 open up Exhibit 4 again. 04:19:49

21 So at the bottom of page 15 in Google's  
22 response --

23 MR. LEE: Just give me one second.

24 MR. SANTACANA: Sure.

25 MR. LEE: Bottom of 15? 04:20:34

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1 MR. SANTACANA: Uh-huh. 04:20:37

2 MR. LEE: Okay. Are you there too?

3 THE DEPONENT: Yes.

4 Q. (By Mr. Santacana) And I'll just read

5 quickly the interrogatory that was posed, which is 04:20:44

6 at the bottom of page 12.

7 It says, "Please describe all facts

8 concerning the revenue and profits that Google

9 generates or receives related to the collection,

10 storage or use of WAA-off data" -- which is a 04:20:53

11 defined term -- "including for each year during the

12 class period."

13 And there a number of sub-bullets, A

14 through J, with requests for details about that

15 information. 04:21:08

16 So now back to the bottom of page 15. It

17 says, "In a process called attribution" -- that's

18 conversion measurement, right? Same thing?

19 A. Yes.

20 Q. -- "Google serves as an account for the 04:21:22

21 app developer/advertiser, determining if the ad

22 interaction and the conversion recorded by GA4F or

23 by a third-party SDK were made by the same device

24 or user so the developer/advertiser can measure the

25 effectiveness of the ad campaign." 04:21:39

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1                   Then it says, "Google tracks app campaign                   04:21:40  
2       ads spend that is bid against different types of  
3       conversions. As of last month, approximately  
4       55 percent of app campaign ad revenue was  
5       attributable to conversion types bid against GA4F                   04:21:56  
6       (as opposed to other sources of conversions)."

7                   With me?

8           A.     Yes.

9           Q.     Okay. What is your understanding of ad  
10       spend bid against GA4F conversions? What does that                   04:22:16  
11       mean?

12          A.     I mean, so what this means is that that's  
13       the percentage of ad spend that was bid against  
14       different types of conversions.

15                  I guess I'm not understanding -- it says                   04:22:42  
16       it right there. That's, I think, self-explanatory.

17          Q.     Does it mean that the advertiser pays per  
18       conversion?

19          A.     No. In my opinion -- not -- it does not  
20       necessarily pay -- it does not pay for conversion                   04:23:10  
21       there. That's a type of ad that is put forward,  
22       and it's not a conversion-based ad, but it's ad  
23       spend based on conversion tracking information.

24          Q.     So what does it mean to bid against a  
25       conversion if it is not paying per conversion?                   04:23:39

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A. So what my understanding there is is bidding against the -- the Google Analytics for Firebase data there at -- it's bidding it in an -- based on an algorithm or information available to it.

6 Q. But how is that different from paying per  
7 conversion? If they are not paying for conversion,  
8 what are they paying for?

9           A.    They are paying -- my understanding is  
10   that they're -- they're paying for ad placements.                   04:24:21

11 Q. Well, if they're paying for placement,  
12 then why is this the measure that you chose to use  
13 to isolate revenue Google generated from conversion  
14 tracking?

15           A.     Because -- because without the conversion           04:24:42  
16     tracking information, they wouldn't be able to  
17     place those bids in that way.

18 Q. Are you sure about that?

19 A. That's my understanding.

|    |   |          |
|----|---|----------|
| 20 | Q. So what do the other 45 percent that             | 04:25:03 |
| 21 | advertise then do if they don't measure conversions |          |
| 22 | with GA4F?  |          |

23           A.    I don't know what the 45 percent do. I  
24    didn't look into that.

|    |  |          |
|----|--|----------|
| 25 | Q. Suffice it to say they're measuring | 04:25:20 |
|----|--|----------|



1 conversions some other way? 04:25:22

2 A. Certainly they may be.

3 Q. For example, in the prior paragraph, it  
4 says that the conversion can be recorded by GA4F or  
5 by a third-party SDK, right? 04:25:42

6 A. It does, yes.

7 Q. It cites some documents, including a  
8 document from Google, telling people how to use  
9 AppsFlyer and Kochava to measure conversions,  
10 right? The prior paragraph. 04:25:54

11 A. It does, yes.

12 Q. Are you familiar with AppsFlyer and  
13 Kochava?

14 A. I am not, no.

15 Q. So if the advertiser is paying Google to 04:26:22  
16 place the ad but, as you say, they wouldn't be  
17 allowed to track the conversion using Google, why  
18 in Scenario 1 do you conclude that they simply  
19 wouldn't place the ad rather than track the  
20 conversion some other way? 04:26:44

21 MR. LEE: Sorry. Who is the "they" in  
22 that sentence?

23 MR. SANTACANA: The advertiser.

24 THE DEPONENT: I -- I think if -- in that  
25 case, I'm not sure that Google -- well, Google 04:26:58

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1 needs to charge them for that ad. So Google needs 04:27:08  
2 to track the ad and track the conversion.

3 So it's -- it's Google's side that I'm  
4 looking at here, not the advertiser's side.

5 So if the advertiser wants to use another 04:27:19  
6 mechanism to track conversions, they may be able  
7 to. But I still think that Google, in this case,  
8 tracks that -- tracks that as well.

9 Q. (By Mr. Santacana) You think that Google  
10 tracks conversions regardless of whether -- you 04:27:38  
11 think that Google tracks conversions and App Promo  
12 campaigns regardless of whether the advertiser uses  
13 GA4F?

14 MR. LEE: Mischaracterizes.

15 THE DEPONENT: No. If they use GA4F, 04:27:53  
16 they do.

17 Q. (By Mr. Santacana) Right. But  
18 45 percent don't, right?

19 A. I -- again, I don't know the answer to  
20 that. If 45 percent don't, yeah. If 45 percent 04:28:05  
21 don't. But 55 percent, at least -- at least at the  
22 end, do.

23 Q. So how is Google making money on the  
24 45 percent?

25 A. That's not something that I investigated. 04:28:16

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1 That's not part of -- I -- my understanding is 04:28:18  
2 that's not relevant to the case.

3 Q. Why not?

4 A. Because my understanding is that this --  
5 that this would relate to Google's tracking. And 04:28:26  
6 Google's tracking would happen through, in some  
7 cases, GA4F, or in some cases GMA SDKs.

8 Q. Right.

9 So Scenario 1 is focused on GA4F, and --  
10 well, no. Strike that. 04:28:46

11 Your Scenario 1 is focused on the  
12 measurement of the conversion; and Scenario 2 is  
13 focused on the service of the ad?

14 Is that -- am I right about that?

15 A. Yes. 04:29:00

16 Q. So, again, sticking with Scenario 1 and  
17 measurement of the conversion, you posit that if  
18 Google couldn't measure the conversion, then it  
19 could not make the ad revenue that it makes for App  
20 Promo campaigns, right? 04:29:09

21 A. Correct.

22 Q. You posit that if the 55 percent of ad  
23 spend that currently uses Google to measure  
24 conversions suddenly were told you can't use Google  
25 to measure these conversions for sWAA-off users 04:29:23

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1 that they would simply not measure conversions? 04:29:25

2 A. Who's "they"?

3 Q. The advertisers.

4 A. Well, the advertisers may measure

5 conversions, but Google would not be able to 04:29:38

6 measure conversions.

7 Q. So why can't the advertiser continue to

8 measure the conversions and continue to place ads

9 with Google if what they are paying for is the

10 placement of the ads? 04:29:48

11 A. But then Google would not be able to

12 charge for those conversions. Google -- Google

13 wouldn't know that there were conversions. Google

14 doesn't -- Google wouldn't have the information.

15 Q. So the 45 percent that don't use GA4F, 04:30:00

16 Google collects no revenue from that?

17 A. No, I didn't say that.

18 Q. Well, then, what you just said cannot

19 possibly be true.

20 A. Yes, it can. 04:30:12

21 Q. Advertisers pay to place advertising with

22 Google, right?

23 A. Yes.

24 Q. I give you money; you place the ad,

25 right? 04:30:21

1 A. Correct. 04:30:23

2 Q. I can measure whether the ad converted  
3 using a Google tool, right?

4 A. That's my understanding, yes.

5 Q. I can also measure whether the ad 04:30:34  
6 converted using a nonGoogle tool, right?

7 A. That maybe accurate.

8 Q. And I can use the nonGoogle tool to  
9 integrate with Google Ads so that the nonGoogle  
10 party tells Google when I get a conversion, right? 04:30:48

11 MR. LEE: Objection to form.

12 THE DEPONENT: I don't know -- I don't  
13 know the answer to that. That's beyond the scope  
14 of my technical ability.

15 Q. (By Mr. Santacana) Okay. Well, assume 04:31:02  
16 for me that that's possible, or even common.

17 Why do you posit that the measurement of  
18 the conversion by Google, as opposed to some other  
19 party, is a but-for cause of the revenue?

20 A. Because -- because that -- because Google 04:31:29  
21 used the data, the information that it had  
22 gotten -- that it had gotten inappropriately, to  
23 actually measure those conversions. And -- and  
24 this is the amount of data that they used to do  
25 that. 04:31:48

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1 Q. I understand that completely. 04:31:48

2 My question is, in the but-for world --  
3 so you agree with me that -- let's back up for a  
4 second.

5 Okay? 04:31:58

6 A. Sure.

7 Q. Advertisers, when they place ads tell  
8 Google when they want an App Promo campaign that  
9 they want a certain kind of conversion, right?

10 A. That -- that certainly is possible. 04:32:17

11 Q. Well, aren't you assuming that in this  
12 opinion?

13 A. Yes. Yes.

14 Q. It's not possible. It's what you believe  
15 to be true? 04:32:34

16 A. Correct.

17 Q. So they also tell Google to serve a  
18 particular creative, right? Here's the language  
19 that should be in my ad, right?

20 A. I -- I don't know -- I don't know what  
21 advertisers do at that level. 04:32:48

22 Q. Why did you choose conversions rather  
23 than impressions as the focus of your disgorgement  
24 of profit Scenario 1?

25 A. Because my understanding is that Google 04:33:29

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1 would not have access to the conversion data when 04:33:30  
2 sWAA is off.

3 Q. So part of the assumption behind  
4 Scenario 1 of your disgorgement of profit opinion  
5 is that if Google could not have used sWAA-off data 04:33:48  
6 to measure conversions, then it would have been  
7 impossible to measure the conversions from the ads  
8 that were served?

9 A. I'm not saying -- I don't think I made  
10 the assumption that it would have been impossible 04:34:09  
11 but, in fact, that that's what they did. That's  
12 what they used the data for, to measure the  
13 conversions. And, therefore, they would not --  
14 they used that data to generate that revenue. They  
15 used sWAA-off users' data to generate that revenue. 04:34:31  
16 That, I calculate in Scenario 1.

17 Q. Google used sWAA-off data to measure  
18 conversions in App Promo campaigns, right?

19 A. That is my understanding, correct.

20 Q. Your task was to determine how much 04:35:09  
21 profit Google made thanks to its use of that  
22 sWAA-off data to measure conversions, right?

23 A. In part, yes.

24 Q. You told me that advertisers pay to place  
25 advertisements, right? 04:35:24

1 A. Correct. 04:35:26

2 Q. They're not paying per conversion in  
3 these App Promo campaigns, right?

4 A. There may be some situations in which  
5 they do. But certainly, there are some situations 04:35:34  
6 in which they're not.

7 Q. How can you attribute the entirety of the  
8 ad revenue for the placement of an ad campaign to  
9 the use of sWAA-off data to measure conversions  
10 when the payment is for the placement of ads? 04:36:19

11 A. Because -- for two reasons.  
12 One, when Google analyzes its conversion  
13 revenue -- its conversion revenue, tracker revenue,  
14 it eliminates that revenue as it -- as it did in  
15 the ads impact document. 04:36:49

16 And so applying a similar methodology  
17 here for App Promo, as well as AdMob and  
18 Ad Manager, makes sense.

19 Q. The document you're referring to, that's  
20 the ChromeGuard study? 04:37:07

21 A. That is correct.

22 Q. Is there any other bases or situation --  
23 is there any other measurement like that that  
24 Google has performed that you're referring to here?

25 A. Above and beyond the ChromeGuard study? 04:37:19

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1 They may have. That's the one that I'm aware of 04:37:21  
2 that's available in this case. I don't know if  
3 they've done other studies as well.

4 Q. Okay. So here's what I don't understand.

5 An advertiser can pay Google to place 04:37:46  
6 advertising for an App Promo campaign and not rely  
7 on GA4F to measure conversions from that campaign,  
8 right?

9 A. That certainly may be possible.

10 Q. Do you have any reason to doubt that 04:38:10  
11 that's true?

12 A. No, I do not.

13 Q. So given that, why do you assume that the  
14 ability to measure conversions with Google's  
15 product is a but-for cause of the ad spend as 04:38:22  
16 opposed to something else?

17 MR. LEE: Asked and answered.

18 THE DEPONENT: I think -- I think I  
19 answered that before.

20 Google used that information to track 04:38:32  
21 that revenue, to -- to generate -- to analyze and  
22 track that revenue. And, therefore, they should  
23 not have been able to, because they should not have  
24 had that information.

25 Q. (By Mr. Santacana) But how do you know 04:38:52

1 it's not a completely irrelevant piece of 04:38:53  
2 information?

3 MR. LEE: Objection.

4 Q. (By Mr. Santacana) So, for example, an  
5 advertiser places an ad campaign. They don't just 04:39:01  
6 say "Use GA4F to track conversions." They also  
7 say, "Here's my phone number and my contact."  
8 Okay?

9 Google presumably keeps those phone  
10 numbers in a database. 04:39:12

11 If a Court ruled that Google's not  
12 allowed to keep the phone numbers for the  
13 advertisers in a database, would you conclude that  
14 all of the ad revenue would have been ill-gotten,  
15 because if they didn't have the phone number, then 04:39:21  
16 they couldn't have run the ad?

17 It would be ridiculous, right?

18 A. I don't even understand what you're  
19 talking about at that point.

20 Q. I don't really understand what you're 04:39:33  
21 talking about either.

22 MR. LEE: Same objection.

23 Q. (By Mr. Santacana) I mean, it would be a  
24 ridiculous thing to say that the phone number of  
25 the contact at the advertiser is a but-for cause of 04:39:39

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1 the advertising revenue, right? 04:39:41

2 MR. LEE: Objection. Improper and  
3 incomplete hypothetical. Lack of foundation.

4 THE DEPONENT: I -- I don't understand  
5 what you're talking about. 04:39:50

6 Q. (By Mr. Santacana) In order to disgorge  
7 profit, there needs to be a connection between the  
8 alleged unlawful conduct and the profit that's  
9 being disgorged, right?

10 A. That is my understanding, yes. 04:40:05

11 Q. A causal connection, right?

12 A. That is my understanding.

13 Q. So when you have done a patent  
14 infringement case, and you do a disgorgement of  
15 profit analysis, and there's an infringing 04:40:18

16 component of a larger product -- right? You with  
17 me so far?

18 A. I think so, yes.

19 Q. The job of the damages expert in that  
20 situation is to determine the proportion of profit 04:40:30  
21 for the whole product that the infringing component  
22 contributed, right?

23 A. I mean, in -- in a royalty case, that is  
24 correct.

25 Q. Sometimes the component is really 04:40:49

1 important, so important that you couldn't even sell 04:40:50  
2 the device if it weren't for that component which  
3 infringes, right? In which case, damages would be  
4 the whole revenue for the infringing product?

5 A. I'm not sure that that's accurate. But I 04:41:07  
6 don't even know -- I guess if you're talking about  
7 a sales -- two-competitor -- a two-competitor  
8 market, that could be possible.

9 Q. Sometimes a component is completely  
10 unimportant. It happens to infringe, but the 04:41:18  
11 seller could have used any number of the other  
12 options, right?

13 There's lots of RAM chips. If this one  
14 infringes, we'll use a different one. I still  
15 would have sold my laptops, just as many as I would 04:41:28  
16 have otherwise, right?

17 You hear what I'm saying?

18 A. I do understand what you're saying.

19 Q. So why doesn't that same analysis apply  
20 here? 04:41:38

21 How -- where -- where in here did you  
22 evaluate whether the ability to measure conversions  
23 with a Google tool is more like the RAM chip in a  
24 laptop that doesn't really drive the revenue or is  
25 more like some component that can't -- that you 04:41:57

1 can't live without? 04:42:02

2 How do you know that's what's driving the  
3 revenue?

4 MR. LEE: Incomplete hypothetical. Asked  
5 and answered. 04:42:10

6 You can answer again.

7 THE DEPONENT: I don't even know if I --  
8 if I said yes to you or no to you, based on all the  
9 things that just happened, if I'd be agreeing with  
10 you or disagreeing with you. 04:42:23

11 I think we're -- I guess I'm just not  
12 understanding where you're trying to go. You had  
13 like a four-paragraph question, so...

14 And I want to you know, take a break at  
15 some point again. 04:42:36

16 MR. LEE: Yeah.

17 THE DEPONENT: It's getting hot again in  
18 here.

19 MR. LEE: I agree. It's got to be like  
20 85 degrees in here. 04:42:41

21 MR. SANTACANA: Okay. Well, can we  
22 just -- can we just finish this quick, then? I'll  
23 be quick.

24 Q. (By Mr. Santacana) To put it a different  
25 way, if at the start of the class period Google had 04:42:52

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1 said, "You may not use Google Analytics for 04:42:56  
2 Firebase to track conversions on App Promo  
3 campaigns."

4 Okay? At all. Not allowed. We're  
5 discontinuing the product. 04:43:08

6 A. Okay.

7 Q. Is it -- doesn't it follow from your  
8 analysis here that all App Promo advertising would  
9 immediately cease?

10 A. So are you asking me to assume that -- 04:43:28

11 MR. LEE: Let me object as improper and  
12 incomplete hypothetical first.

13 THE DEPONENT: Okay.

14 MR. LEE: Calls for speculation. Lack of  
15 foundation. 04:43:41

16 Go ahead.

17 THE DEPONENT: That Google would -- would  
18 tell people to use other...

19 Q. (By Mr. Santacana) Yeah.

20 A. To use other and not -- and not live up 04:43:48  
21 to their promise on the SWAA data, and still give  
22 those --

23 Q. No. Let me try again.

24 MR. LEE: Well, let him finish, and then  
25 we can try again. 04:44:03

1 THE DEPONENT: Well -- okay. 04:44:03

2 Q. (By Mr. Santacana) Imagine that at the  
3 start of the class period, Google said, "Hey, App  
4 Promo advertisers, we're getting out of the  
5 analytics game. No more GA4F. Not for sWAA-on 04:44:14  
6 users, not for sWAA-off users, not for anybody.  
7 Goodbye GA4F."

8 Right? You with me so far?

9 A. Yes.

10 Q. You have percentages here on conversion 04:44:26  
11 types bid against GA4F which you rely on, right?

12 A. Yes.

13 Q. Is it -- are you saying that Google's ad  
14 revenue for App Promo campaigns would drop by the  
15 percentages that were bid against GA4F in those 04:44:41  
16 years if Google discontinued GA4F?

17 A. Well, that didn't happen.

18 Q. I understand.

19 A. So I don't know -- I don't know what  
20 would happen. 04:44:52

21 Q. Well, you're trying to determine how much  
22 profit Google made, right, from this component,  
23 which is alleged to be unlawful, as opposed to  
24 other things?

25 A. Which I did. 04:45:05

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1 Q. So I'm just trying to understand how you 04:45:06  
2 know that this component is what drove the revenue  
3 and not other things. Because I don't see in your  
4 report anywhere where it says, "This component is  
5 the but-for cause of the revenue." 04:45:17

6 A. Well, if you looked at the ads impact  
7 document, it's a very similar calculation to what I  
8 make.

9 Q. ChromeGuard?

10 A. For ChromeGuard, which would be 04:45:31  
11 applicable here in this particular case.

12 So -- so, therefore, that -- when -- when  
13 Google is doing its own economic analysis, that's  
14 how it looks at it.

15 And so I think following, when Google 04:45:44  
16 is -- is doing its own economic analysis, doing  
17 something similar for when it's trying to calculate  
18 a change in revenue due to a privacy setting is  
19 appropriate.

20 MR. LEE: Now I'm going to actually say 04:46:03  
21 that we're taking a break, because his neck is  
22 getting red, and his ears are getting red.

23 And I know we don't want him to be  
24 uncomfortable. He asked for a break a while ago.

25 So let's go off the record. 04:46:12

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1 MR. SANTACANA: Sure. It was one 04:46:14  
2 question ago, but sure.  
3 THE VIDEOGRAPHER: Off the record. The  
4 time is 4:45.  
5 (Recess taken.) 04:46:19  
6 THE VIDEOGRAPHER: This marks the  
7 beginning of Media No. 6 in the deposition of  
8 Michael Lasinski. We are back on the record, the  
9 time is 5:09.  
10 Q. (By Mr. Santacana) When we left off, you 05:10:03  
11 had mentioned the ChromeGuard study.  
12 Do you recall that?  
13 A. Correct.  
14 So on what basis did you conclude that  
15 the measurements done in the ChromeGuard study were 05:10:22  
16 analogous to the measurement you were trying to  
17 accomplish here?  
18 MR. LEE: Objection to form. Vague as to  
19 "here."  
20 THE DEPONENT: So in ChromeGuard -- in 05:10:45  
21 the ChromeGuard study, it analyzes a privacy  
22 setting in Display that will be a Chrome -- a  
23 privacy setting in Display that will affect revenue  
24 based on conversion tracking information.  
25 My understanding here, similarly, is 05:11:21

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1       there would not be conversion tracking information                     05:11:24  
2       available for sWAA-off users, and this relates to a  
3       privacy setting as well, as -- as well as relating  
4       to Display.

5 Q. (By Mr. Santacana) By "Display," you 05:11:49  
6 mean the Google Display Network for advertising?

|   |         |
|---|---------|
| 7 | A. Yes. |
|---|---------|

|    |   |          |
|----|---|----------|
| 8  | Q. Now ChromeGuard is related to the                |          |
| 9  | Google Display Network advertising on Web browsers, |          |
| 10 | right?  | 05:12:01 |

|    |             |
|----|-------------|
| 11 | A. Correct. |
|----|-------------|

12 Q. And it is a study related to the impact  
13 of changing certain settings in Chrome's incognito  
14 mode?

|    |                          |          |
|----|--------------------------|----------|
| 15 | A. That is correct, yes. | 05:12:13 |
|----|--------------------------|----------|

16 Q. On what basis did you conclude that the  
17 change in privacy settings in the ChromeGuard study  
18 is analogous to the change in how SWAA works in  
19 this case?

A. My understanding of -- in that -- in that case, meaning the ChromeGuard study, is it also -- is there also is -- the information would be limited on Google's ability to conversion track for -- when someone is in incognito mode.

|    |                                       |          |
|----|---------------------------------------|----------|
| 25 | I was informed in this case that with | 05:13:30 |
|----|---------------------------------------|----------|

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```
1      sWAA off, Google would not be able to conversion          05:13:32
2      track as well.  And so for that particular data
3      point that I was using here, they are similar.
```

|   |                |
|---|----------------|
| 4 | Q. Understood. |
|---|----------------|

5                   The ChromeGuard study was evaluating not                   05:13:50  
6       just what would happen if Google were disabled from  
7       conversion tracking in incognito mode, but if all  
8       conversion tracking from anyone was disabled in  
9       incognito mode, correct?

|    |                                     |          |
|----|-------------------------------------|----------|
| 10 | A. I believe that that is accurate. | 05:14:16 |
|----|-------------------------------------|----------|

11 Q. It was a study to determine what would  
12 happen to Google's ad revenue if conversion  
13 measurement were impossible in incognito mode by  
14 any party, company or third-party cookie; is that  
15 fair?

16 A. I don't know the specifics of that.

17 Q. Let me ask it differently.

18           The assumption behind the ChromeGuard  
19 study, as you understand it, was that there would  
20 be no third-party cookies in incognito mode,                 05:14:54  
21 whether they belonged to Google or to some other  
22 third party.

|    |              |
|----|--------------|
| 23 | Fair to say? |
|----|--------------|

24 A. I believe that that is accurate, yes.

|    |  |          |
|----|--|----------|
| 25 | Q. Whereas here, the plaintiffs do not | 05:15:09 |
|----|--|----------|

1 allege that advertisers should be disabled from 05:15:11  
2 using third parties to track conversions. They  
3 only allege that Google should be disabled from  
4 tracking them.

5 Is that fair to say? 05:15:24

6 A. I do believe that that is the case.

7 Q. And you assumed that in your analyses,  
8 that the specific conduct that is alleged to be and  
9 unlawful in the case is Google's conversion  
10 tracking for purposes of your Scenario 1 damages 05:15:44  
11 figure.

12 You do not assume in Scenario 1 that  
13 advertisers would be disabled from using  
14 third parties to measure conversions, correct?

15 A. That is correct. I do not assume that. 05:16:02

16 Q. What, if anything, did you do to account  
17 for that distinction between the ChromeGuard study,  
18 where third parties are disabled from doing  
19 conversion tracking, and your Scenario 1, where  
20 they are not disabled from doing conversion 05:16:16  
21 tracking?

22 A. Well, as we talked about, in this -- as I  
23 looked at -- I look at ChromeGuard -- ChromeGuard.

24 I looked at the information provided to  
25 me for App Promo that talks about Google's 05:16:29

1 conversion tracking for GA4F. 05:16:33

2 (Discussion off the stenographic record.)

3 THE DEPONENT: So I know that -- I know

4 what are those rates are. We -- I had that

5 information. Google provided it to me, and we 05:16:51

6 provided it to the case, and we've already talked

7 about that.

8 Here, if you look at -- if you look at

9 the ChromeGuard study, it's at 52 percent.

10 52 percent is number that is similar to what GA4F 05:17:06

11 is at the end, based on the end of its information.

12 There -- I think it's at 55 percent. This is

13 52 percent.

14 So that seemed like a reasonable

15 percentage to me. 05:17:21

16 Q. (By Mr. Santacana) What are you looking

17 at right now? Figure --

18 A. I'm not --

19 Q. -- 28?

20 A. I wasn't actually looking at anything. I 05:17:27

21 have it open to Figure -- to Figure 28, but I

22 wasn't looking at anything as I was answering that.

23 Q. Okay. Well, I'd like to look at the

24 52 percent you're referring to.

25 Can you pull that up for me? 05:17:39

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1 A. It's -- I have it in Figure 28. 05:17:47

2 Q. Okay. In Figure 28, which is screenshot  
3 of a ChromeGuard study document --

4 A. Yes.

5 Q. -- there's a red box around "52 percent," 05:18:14  
6 parentheses, "conversion-based autobidding  
7 proportion."

8 Is what you're referring to?

9 A. Yes.

10 Q. And -- sorry. Could you just explain to 05:18:28  
11 me what you believe that 52 percent represents in  
12 the context of the ChromeGuard study?

13 A. Well, what that 52 percent represents is  
14 the impact -- the overall approximate revenue  
15 impact ratio to Display ads for conversion-based 05:18:47  
16 autobidding. And that is in the -- in the context,  
17 as the document says, of conversion tracking.

18 Q. So there's three numbers under the  
19 heading "overall approximate revenue impact ratio  
20 to Display Ads." 05:19:15

21 A. Yes.

22 Q. The first number is 0.5918 percent.

23 A. Yes.

24 Q. What do you understand that number to  
25 represent? 05:19:23

1 I think it's right -- 05:19:23

2 A. Yeah. I was going to say, if I remember  
3 correctly, that's the fraction of traffic that was  
4 going to be impacted.

5 Q. By what? 05:19:36

6 A. By ChromeGuard.

7 Q. Okay. So 0.5918 percent of total traffic  
8 would be impacted by the blocking of all  
9 third-party cookies on Chrome's incognito mode?

10 A. I think -- I don't -- I don't have all 05:19:58  
11 the documents underlying this. But I think that  
12 that relates to Display ad traffic.

13 I think -- I think if you look at all  
14 traffic, I think it was higher than that for  
15 this -- for ChromeGuard. 05:20:17

16 Q. Display ad traffic. And the 52 percent  
17 represents the proportion of that traffic that  
18 what?

19 A. The 52 percent represents the revenue  
20 impact to Display ads. 05:20:42

21 Q. Are you sure?

22 A. Yes. For that traffic.

23 Q. Isn't the revenue impact the third  
24 number, approximately 0.3 percent?

25 A. No. Well, yes and no. 05:21:08

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1           The 52 -- the 52 percent is the actual           05:21:10  
2       revenue impact, but you have to multiply it by the  
3       amount of traffic -- the amount of actual revenue  
4       that's flowing through that traffic, if you will,  
5       to calculate that -- the revenue impact -- the           05:21:22  
6       ultimate revenue impact to Google Displays overall.

7           That calculation, those steps of the  
8       calculation, are similar to what I perform in my  
9       calculations to get down to the impacted revenue.  
10      For -- just to be clear, for Scenario 1.           05:21:49

11           Q.    The 52 percent has, in parentheses behind  
12      it, "conversion-based autobidding proportion."

13                  What is the "conversion-based  
14      autobidding"?

15           A.    My understanding is that that's           05:22:12  
16      autobidding that is based upon conversion  
17      information that Google gets from tracking -- from  
18      tracking conversions.

19           Q.    Is it your assumption that the 52 percent  
20      represents autobidding based on conversion tracking    05:22:52  
21      performed by Google, or autobidding based on  
22      conversion tracking performed by anyone?

23                  You understand my question?

24           A.    Yeah, I understand your question, I  
25      think.   05:23:37

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1 From -- from my analysis in SWAA off, I 05:23:37  
2 did not need to make a calculation of that.

3 Here, I used 52 percent because I do  
4 believe that that's an appropriate number for  
5 Google's conversion tracking information for AdMob 05:24:20  
6 and Ad Manager.

7 Q. Sorry. I'm not -- I don't understand  
8 your answer. I'm just -- I'm going to repeat my  
9 question, and maybe you can help me understand your  
10 answer. 05:24:35

11 Is it your assumption that the 52 percent  
12 in this ChromeGuard study screenshot represents  
13 autobidding based on conversion tracking performed  
14 by Google, or autobidding based on conversion  
15 tracking whether it's performed by Google or a 05:24:52  
16 third party?

17 A. In this case, I'm -- I'm -- the way I'm  
18 using it, I'm using it is performed by Google.

19 Q. How do you know that that's what that  
20 number means? 05:25:03

21 A. I believe that it's an accurate number to  
22 use in this case and that that's what this number  
23 means, because if you look at the data that's  
24 available on conversion tracking for App Promo and  
25 you look at the conversion tracking information for 05:25:30

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1     Firebase that we were -- that we were looking at                         05:25:32  
2     before, that number turns out to be about 5 --  
3     55 percent in -- in a similar time period.

4                   And so this -- applying this number, this  
5   52 percent number, for AdMob as well as for Ad  
6   Manager seems like a reasonable assumption.

7 Q. Your conclusion that it's a reasonable  
8 assumption is that 55 percent and -- is based on  
9 the fact that 55 percent and 52 percent are close  
10 in number? 05:26:13

11           A.    Yes.  I mean, they're -- they're similar.  
12       And so that seems like it's an appropriate  
13       approximation in this case.

14 Q. So on the Web, Google Display ads can be  
15 placed and paid for in a variety of ways, right? 05:26:44

16 A. I believe that that's accurate.

17 Q. That includes, for example, cost per  
18 click, right?

19 A. I believe that that's accurate.

|    |  |          |
|----|--|----------|
| 20 | Q. It can include cost per impression? | 05:27:02 |
|----|--|----------|

21 A. I believe that that's accurate as well.

22 Q. It can include cost per conversion?

|    |             |
|----|-------------|
| 23 | A. Correct. |
|----|-------------|

24 Q. And there are other ways to pay as well,

25 right? 05:27:20

1 A. That's consistent with my understanding. 05:27:24

2 Q. How do you know that the 52 percent in  
3 the Figure 28 is not meant to account for the  
4 proportion of ad revenue on the Web from the  
5 Google Display Network that is based on cost per 05:27:49  
6 conversion as opposed to one of the other methods I  
7 just mentioned?

8 A. Could you repeat that question?

9 Q. How do you know that the 52 percent in  
10 Figure 28 is not meant to account for the 05:28:13  
11 proportion of ad revenue on the Web from  
12 Google Display Network based on cost per conversion  
13 as opposed to some other method of billing for ads,  
14 like cost per click?

15 A. Well, this document starts off with 05:28:30  
16 conversion tracking. It's -- it's calculating  
17 conversion tracking revenue.

18 Q. I agree.

19 A. Based on conversion tracking.

20 Q. But I think that you testified that you 05:28:40  
21 believe the 52 percent is tied to the proportion of  
22 ad revenue on Google's Display Network where the  
23 conversion was measured by a Google product, a  
24 Google cookie, right?

25 MR. LEE: Objection to form. 05:29:01

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1 Mischaracterizes. 05:29:02

2 THE DEPONENT: I don't think I testified  
3 to that.

4 Q. (By Mr. Santacana) Okay. Are you under  
5 the impression that the 52 percent is the 05:29:05  
6 proportion of Google Display revenue on the Web  
7 where a conversion was measured by a Google cookie?

8 A. I -- my understanding is that it could  
9 be -- it certainly could be measured by a Google  
10 cookie. That's correct. 05:29:26

11 Q. But also included in the 52 percent are  
12 conversions measured by a third-party cookie that  
13 is not a Google cookie, correct?

14 A. That is my understanding, yes.

15 Q. Okay. And the reason that, in 05:29:40  
16 ChromeGuard, that was a fair figure to use for  
17 apportionment was that all conversion tracking,  
18 whether by a Google cookie or a third-party  
19 nonGoogle cookie, would be blocked, right? That's  
20 the variable they were testing? 05:30:12

21 A. That is my understanding, if I remember  
22 correctly.

23 Q. But you've testified that in Scenario 1,  
24 the measurement of conversions by third-party SDKs  
25 would not be blocked, correct? 05:30:26

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1 A. My -- 05:30:31

2 MR. LEE: Objection to form.

3 Mischaracterizes.

4 THE DEPONENT: My understanding is that

5 they would not be necessarily be blocked. That is 05:30:36

6 correct.

7 Q. (By Mr. Santacana) Now, in your

8 Scenario 1, you rely on the fact that, as a

9 historical matter, 55 percent of ad spend -- and

10 there are other numbers for each year, but let's 05:30:59

11 just use 55 percent for the most recent year --

12 55 percent of ads spend was attributable to

13 conversions bid against GA4F, right?

14 A. That is correct. I do use that in my

15 calculation. 05:31:14

16 Q. And so that helped you determine

17 accurately, as a historical matter, how much

18 revenue you believe is attributable to Google's

19 conversion measurements using GA4F in App Promo

20 campaigns, right? 05:31:34

21 A. Maybe I'm misunderstanding what you're

22 trying to ask, but Google provided that information

23 itself. So it's not an assumption of mine. Google

24 actually provided that information, the amount of

25 revenue that's attributable to GA4F conversions. 05:31:48

1 Q. Well, maybe we're using the word 05:31:53  
2 "attributable" in different ways.

3 You conclude that that is a fair way to  
4 determine how much of Google's revenue from App  
5 Promo campaigns is attributable to the alleged 05:32:06  
6 unlawful conduct, right?

7 A. Yes, that is correct. For App Promo.

8 Q. Did you do anything to consider how much  
9 revenue Google would have made if it had not been  
10 able to measure conversions using GA4F? 05:32:34

11 A. Well, I leave that revenue -- you know,  
12 revenue that is not related to GA4F, I -- is  
13 untouched in my analysis under Scenario 1.

14 Q. As a historical matter. I understand.

15 My question is: Did you take the 05:32:57  
16 additional step in your report of analyzing what  
17 would have happened in the but-for world if Google  
18 had not been permitted to measure conversions using  
19 GA4F?

20 Did you do anything to think about that 05:33:14  
21 as a methodological exercises?

22 A. So you're saying shut off GA4F  
23 completely?

24 Q. For sWAA users.

25 A. Well, I haven't seen anything in the 05:33:34

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1 record that would indicate that that's something 05:33:35

2 that they're doing.

3 Q. Well, I understand that --

4 A. So --

5 Q. -- but, for example, Mr. Hochman opines 05:33:41

6 that that's what Google should do, right?

7 So I'm just asking, have you -- have you

8 done anything to measure what would happen in the

9 world if that happened?

10 A. I'm not aware of an alternative scenario 05:33:57

11 that one would use to measure that if that were to

12 happen. So I did not measure that.

13 Q. Okay. And you are aware -- let's --

14 let's take Mr. Hochman's opinion -- you've read his

15 report, right? 05:34:12

16 A. Yes, I did. But I -- to say that I'm

17 aware of Mr. Hochman's opinions will probably

18 require me to go back and look at Mr. Hochman's

19 report.

20 Q. Well, I'm not going to get too deep into 05:34:22

21 it. I'm just interested right now in his opinion

22 near the end of his report where he says going

23 forward, Google could just stop measuring

24 conversions from SWAA-off users. Okay?

25 Have you done anything to consider, if 05:34:37

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1 Google did that, what would happen to Google's ad 05:34:41  
2 revenue?

3 A. I mean, the information that I'm  
4 reading -- that I've read in this case indicates  
5 that that's not something that Google is going to 05:35:05  
6 do. They, in fact, think that it's -- GA4F is  
7 critically important to them going forward. So I  
8 don't think that that's something that they're  
9 going to do.

10 I have not measured an impact of what 05:35:18  
11 would do if that, in fact, did happen, if they shut  
12 off GA4F.

13 Q. Right. Okay.

14 I mean, you understand that one of the  
15 things that Mr. Hochman is saying is the Court 05:35:30  
16 could order Google to not measure conversions from  
17 sWAA-off users, right?

18 I mean, the plaintiffs alleged that's  
19 illegal, so the Court may say, "Don't do that  
20 anymore," right? 05:35:44

21 A. The Court may say that.

22 Q. Okay. So if the Court were to do that,  
23 don't measure conversions for sWAA-off users  
24 anymore, it's illegal, what, in your mind, would  
25 happen to the ad spend that formerly had been spent 05:36:06



1 and bid against GA4F conversions? Would it 05:36:11  
2 disappear?

3 A. I mean, that's a hypothetical that I  
4 don't need to calculate. If, going forward, they  
5 don't use it, my damages calculation only goes up 05:36:28  
6 through 2022. So if they don't -- don't use it in  
7 the future, I'm not -- I have not analyzed what  
8 would happen in that case.

9 Q. Have you analyzed that question with  
10 respect to what would have happened if a Court had 05:36:45  
11 issued that ruling at the start of the class  
12 period?

13 A. My -- no. My -- my assumption -- not my  
14 assumption.

15 My assignment here is to calculate what 05:37:05  
16 Google, in fact, did do. And they use -- oh, I  
17 think you used ill-gotten information or something  
18 like that. They used the ill-gotten information to  
19 actually track conversions --

20 Q. Right. 05:37:19

21 A. -- during the period.

22 Q. Right.

23 A. And I calculated the profit associated  
24 with that.

25 Q. So you did not see it as part of your 05:37:26

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1 assignment to measure the proportion of Google's 05:37:28  
2 App Promo revenue that was garnered thanks to the  
3 ill-gotten data as opposed to other factors, like  
4 quality of the ad service, or the speed of the ad  
5 network, or other metrics that Google can provide? 05:37:51

6 A. I did not -- I did not analysis other  
7 metrics. I looked at what the actual ill-gotten  
8 gains were in this case.

9 Q. And you did not see it as part of your  
10 assignment to analyze how Google advertisers or 05:38:10  
11 users would have responded to a change in  
12 circumstances at the start of the class period  
13 where a Court ordered that Google could not measure  
14 conversions using GA4F for sWAA-off users?

15 That was not part of your assignment, 05:38:36  
16 right?

17 MR. LEE: You mean other than Scenario 1?  
18 Maybe I'm not following.

19 MR. SANTACANA: I'm not either.

20 Q. (By Mr. Santacana) Can you answer my 05:38:47  
21 question?

22 A. I just don't even know -- if you're not  
23 following your own question, I don't know how to  
24 answer it, then.

25 Q. No. I'm following Mr. Lee's attempt to 05:38:52

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1 testify for you. 05:38:55

2 Did you see as part of your assignment to  
3 analyze how Google advertisers -- excuse me -- how  
4 Google advertisers or users would have responded to  
5 a change in circumstances at the start of the class 05:39:08  
6 period where Google was no longer able to use  
7 WAA-off data to measure conversions?

8 MR. LEE: I have the same question and  
9 objection.

10 THE DEPONENT: I have not analyzed that 05:39:23  
11 with the exception of what I did for my scenarios,  
12 Scenario 1 and Scenario 2.

13 Q. (By Mr. Santacana) So okay.

14 With respect to Scenario 1, how -- what  
15 was the result of your analysis as to how Google 05:39:37  
16 would have responded to that change of  
17 circumstances? What do you conclude Google would  
18 have done in that situation?

19 A. I have not made a conclusion about what  
20 Google would have done. I analyzed what they 05:39:53  
21 actually did do.

22 Q. And what did you conclude as to what  
23 advertisers would have done in those changed  
24 circumstances at the start of the class period?

25 A. I analyzed what -- what the actual world 05:40:12

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1 was, not what they -- not what they would have done 05:40:14  
2 in some different but-for world.

3 Q. And what did you conclude, if anything,  
4 as to what users would have done in those changed  
5 circumstances at the start of the class period? 05:40:24

6 A. I mean, ultimately, I analyzed what they,  
7 in fact, did do. Now, I don't even know what  
8 the -- what the hypothetical means, what users  
9 would have done in that case.

10 Q. Okay. So you didn't reach any 05:40:49  
11 conclusions about whether and how users would  
12 change their behavior in a situation, at the start  
13 of the class period, where the Court had said  
14 Google cannot measure conversions with GA4F for  
15 sWAA-off users? 05:41:06

16 There's no opinions about that in your  
17 report, right?

18 MR. LEE: I'm sorry. You lost me. Can  
19 you ask that one more time?

20 THE DEPONENT: So I'm trying to 05:41:15  
21 understand what you're saying.

22 MR. LEE: I need to hear the question one  
23 more time.

24 MR. SANTACANA: Do you have real time?

25 MR. LEE: I don't. 05:41:22

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1 MR. SANTACANA: Can you pull it up? 05:41:23

2 MR. LEE: I don't have real time.

3 MR. SANTACANA: You're just not paying

4 for it?

5 MR. LEE: I don't use real time as a 05:41:26

6 practice.

7 MR. SANTACANA: Okay. Well, I need you

8 to use either real time or --

9 MR. LEE: I think I've asked you to

10 repeat a question maybe twice today, so -- 05:41:30

11 MR. SANTACANA: I don't agree with you.

12 MR. LEE: You have real time. Do you

13 want to hand it to me, and I can read it again? Or

14 you can just reask the question as a courtesy to

15 me. I'd appreciate it. I need to know whether to 05:41:39

16 lodge an objection or not.

17 Q. (By Mr. Santacana) You didn't reach any

18 conclusions about whether and how users would

19 change their behavior in a situation at the start

20 of the class period where the Court had said Google 05:41:50

21 cannot measure conversions with GA4F for SWAA-off

22 users?

23 MR. LEE: Same objections as before. And

24 asked and answered.

25 THE DEPONENT: I believe I answered that, 05:42:11

1 but I don't know -- I don't really follow that 05:42:12  
2 hypothetical, because that did not happen. So I'm  
3 not sure --  
4 Q. (By Mr. Santacana) I know it didn't  
5 happen. 05:42:18  
6 A. -- how to answer that.  
7 Q. So Google would have --  
8 A. I don't understand, like, how would  
9 Google have communicated this information to users?  
10 Q. (By Mr. Santacana) My question is just, 05:42:28  
11 that's not part of your opinions in the case,  
12 right? I just want to understand the limits of  
13 your opinions.  
14 You did not undertake that assignment?  
15 MR. LEE: Same question. Same objection. 05:42:37  
16 THE DEPONENT: Of -- of what?  
17 Q. (By Mr. Santacana) Of how users'  
18 behavior would have changed, if at all, in the  
19 situation at the start of the class period where  
20 the Court ordered that Google could not use 05:42:53  
21 sWAA-off data to measure conversions with GA4F?  
22 A. I -- I think I'm following the  
23 hypothetical. I don't -- I did not --  
24 Q. Okay.  
25 A. -- measure that. 05:43:12

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1 Q. It's not -- it's not a trick question. 05:43:13

2 A. I'm not --

3 Q. I'm just, like, confirming that that's  
4 not something you did, or that you did and you  
5 didn't write it down. 05:43:20

6 A. I think -- I think you've read my report,  
7 so I'm not trying to trick you either.

8 Q. Okay. Did you discuss conversion-based  
9 autobidding with Mr. Hochman?

10 A. Yes. 05:43:48

11 Q. What did he tell you about  
12 conversion-based autobidding?

13 Let me withdraw.

14 You're looking at your report. Is it  
15 fair to say anything Mr. Hochman told you about 05:44:40  
16 conversion-based autobidding is reflected in your  
17 report?

18 A. No, it's not.

19 MR. LEE: If you need to consult your  
20 report or -- to refresh your recollection about 05:44:53  
21 Mr. Santacana's question, feel free to do that. I  
22 don't think he's limiting you.

23 THE DEPONENT: I don't know that I  
24 identify in my report where Mr. Hochman and I spoke  
25 about conversion-based autobidding. 05:45:27

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1 Q. (By Mr. Santacana) But you know that you 05:45:33

2 did?

3 A. Yes.

4 Q. Did you document your conversation with

5 Mr. Hochman about conversion-based autobidding in 05:45:40

6 any way?

7 A. Any -- any documentation about -- from

8 any of my discussions with Mr. Hochman is -- is in

9 my report. I didn't -- I don't have any other

10 documents besides my report. 05:46:03

11 Q. Okay. Did you rely on your conversation

12 with Mr. Hochman and what told you about

13 conversion-based autobidding in rendering your

14 opinions?

15 A. I mean -- I mean, yes. And to the extent 05:46:21

16 that they would have flown -- flowed, not flown --

17 flowed into my calculations, I would have

18 identified that in my report.

19 But I can't see where they did

20 specifically flow into my calculations. So I 05:46:52

21 didn't -- I don't know that I have a specific cite

22 back to that discussion, that portion of my

23 discussion with Mr. Hochman.

24 Q. Maybe I misunderstood.

25 But are you saying that yes, you did rely 05:47:09

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1 on what Mr. Hochman told you about conversion-based 05:47:12  
2 autobidding in rendering your opinions; but no, you  
3 did not document where you made that reliance --

4 MR. LEE: Objection.

5 Q. (By Mr. Santacana) -- for what he told 05:47:24  
6 you?

7 MR. LEE: Objection. Mischaracterizes  
8 his testimony.

9 You can answer again.

10 THE DEPONENT: No. What I'm saying is, 05:47:29  
11 to the extent we had a conversation on  
12 conversion-based autobidding, I don't have any  
13 other documents besides my report.

14 To the extent that it was -- it was -- it  
15 would be necessary to document that in my report, I 05:47:47  
16 would only see it being -- as being necessary to  
17 document in my report if it flowed into my  
18 calculations.

19 I don't -- I don't know specifically that  
20 that discussion would flow directly into my 05:48:08  
21 calculations, so I don't know that -- I don't know  
22 if I have a cite in my report that would represent  
23 that discussion.

24 Q. (By Mr. Santacana) The 52 percent  
25 conversion-based autobidding number we were just 05:48:25

1 talking about in the ChromeGuard study, you had 05:48:29  
2 some understanding of that number, and that did  
3 flow into your ultimate opinions, didn't it?

4 A. Yes, it did.

5 Q. Was your understanding of that 52 percent 05:48:41  
6 conversion-based autobidding number informed at all  
7 by your conversations with Mr. Hochman?

8 A. As I'm sitting here, I cannot recall if  
9 Mr. Hochman and I talked specifically about the  
10 52 percent in this case. I can't -- I can't recall 05:49:50  
11 that I did speak to him specifically about  
12 52 percent.

13 Q. I appreciate that. My question was a  
14 little different, which is, was your understanding  
15 of that 52 percent conversion-based autobidding 05:50:02  
16 number informed by your conversations with Hochman  
17 about conversion-based autobidding?

18 A. Well, the way to answer that is, I -- I  
19 talked to Mr. Hochman about conversion-based  
20 autobidding. So yes, my -- my general 05:50:25  
21 understanding of conversion-based autobidding was  
22 based on my discussions with Mr. Hochman.

23 As it relates to that specific document  
24 for that specific purpose, I don't recall if I  
25 talked to him specifically about that or not. 05:50:45

1 Q. What did Mr. Hochman tell you about 05:50:48  
2 conversion-based autobidding?

3 A. I -- I don't remember specifically what  
4 he told me versus what I've learned in -- in the  
5 case. 05:51:00

6 Q. What do you mean?

7 A. Well, there are -- there is information  
8 on conversion-based autobidding in documents in the  
9 case.

10 Q. Are you sure about that? 05:51:18

11 A. I believe -- yes, I believe that there  
12 are.

13 Q. Have you cited those documents?

14 A. To the extent that I would have relied  
15 upon them, yes, I would have cited them. 05:51:31

16 Q. So if none of the documents that you  
17 cited contain the phrase "conversion-based  
18 autobidding," is it fair to say that none of the  
19 documents you cited informed your understanding of  
20 conversion-based autobidding? 05:51:54

21 A. That would be fair to say, I think.

22 Q. And if the only document that you cited  
23 that contains that phrase is the ChromeGuard study  
24 document, and apart from that, your understanding  
25 came from your conversations with Mr. Hochman, is 05:52:14

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1 it fair to say that I cannot tell from your report 05:52:17  
2 what you learned about conversion-based  
3 autobidding?

4 A. I don't know the answer to that. I'd  
5 have to read my entire report, which I'm happy to 05:52:41  
6 do right now, to answer that question.

7 Q. Well, I can tell you that it does not  
8 define the term.

9 A. Are you asking me a question?

10 Q. Do you disagree? 05:53:04

11 A. What does not define the term?

12 Q. Your report.

13 A. I don't disagree. It may not define the  
14 term.

15 Q. And sitting here now, you cannot recall 05:53:22  
16 what Mr. Hochman told you about conversion-based  
17 autobidding?

18 A. Not specifically, no.

19 Q. Okay. Your Footnote 219 is on page --  
20 sorry. Wrong one. Strike that. 05:54:08

21 Take another look at Figure 28.

22 A. Figure 28 in my report?

23 Q. Uh-huh.

24 A. Okay.

25 Q. Okay. Do you see the references in this 05:54:27

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1 ChromeGuard study screenshot to "DV3 traffic"? 05:54:37

2 A. Yes.

3 Q. And to "non-DV3 traffic"?

4 A. Yes.

5 Q. Do you have an understanding of what 05:54:46

6 those terms mean?

7 A. As I'm sitting here, I don't. I don't

8 recall what those terms mean.

9 Q. A little higher there, there's a term

10 "traffic fraction of SSCT plus conversion cookie." 05:55:14

11 A. Yes.

12 Q. What is "SSCT"?

13 A. As I'm sitting here, I don't recall what

14 "SSCT" stands for.

15 Q. What is sitewide tagging? 05:55:46

16 A. I would have to -- if I remember

17 correctly, sitewide tagging relates to the tagging

18 of a website with third-party cookies.

19 Q. Okay. Is there any basis for your

20 conclusion that user behavior with respect to 05:56:40

21 advertising on the Web is analogous to user

22 behavior with respect to advertising on mobile

23 devices?

24 A. Are you talking about my use here of the

25 Display ads estimate -- 05:57:05

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1 Q. Yes. 05:57:07

2 A. -- in 52? Yes.

3 Q. What's the basis?

4 A. The basis is that they're both Display

5 ads. And then, in addition to that, as we've 05:57:13

6 talked about before, I looked at -- I looked at

7 conversion -- this conversion-based autobidding

8 number and compared to it the -- the most recent

9 information from the App Promo analysis that I did.

10 Q. And because the numbers were close in 05:57:40

11 number, I guess your intuition told you that it

12 must be pretty similar?

13 A. In part. That is correct in part.

14 Q. And how confident are you that your

15 understanding of the 52 percent number is accurate? 05:57:53

16 A. I'm confident that it's appropriate for

17 this calculation.

18 Q. Okay.

19 MR. LEE: I think we need another break

20 soon. How are you holding up, Mike? 05:58:20

21 THE DEPONENT: Well, I mean, it feels

22 like somebody turned the heat on in here. To be

23 honest, it feels a little unfair.

24 MR. SANTACANA: Okay. We can take a

25 break. 05:58:32

1 THE VIDEOGRAPHER: This marks the end of 05:58:36  
2 Media No. 6. Off the record. The time is 5:58.  
3 (Recess taken.)  
4 THE VIDEOGRAPHER: This marks the  
5 beginning of Media No. 7 in the deposition of 06:16:15  
6 Michael Lasinski. We're back on the record. The  
7 time is 6:15.  
8 Q. (By Mr. Santacana) Mr. Lasinski, I want  
9 to call your attention to your "Actual Damages"  
10 opinion. 06:16:30  
11 A. Okay.  
12 Q. And just flip to that section of your  
13 report.  
14 MR. LEE: It's 47.  
15 THE DEPONENT: Yup. 06:16:47  
16 Q. (By Mr. Santacana) All right. So as we  
17 discussed earlier, you determined actual damages as  
18 a function of the payments necessary to incentivize  
19 a class member to knowingly surrender the choice to  
20 keep the activity on their mobile apps private, 06:17:03  
21 right?  
22 A. That is correct, yes.  
23 Q. Do you agree or disagree with Dr.  
24 Knittel -- I was informed it's "Knittel."  
25 A. Okay. 06:17:19

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1 MR. LEE: That changes everything. 06:17:21

2 Q. (By Mr. Santacana) Do you disagree with  
3 Dr. Knittel that economic damages should measure  
4 the difference between the plaintiffs' economic  
5 position if the harmful event had not occurred and 06:17:27  
6 the plaintiffs' actual economic position?

7 A. I believe that that's accurate.

8 Q. And just to be clear again on the limits  
9 of your opinion, you did not attempt to measure any  
10 emotional distress damages, right? 06:17:52

11 A. My -- my understanding of what's  
12 necessary here is for me to calculate what is an  
13 appropriate price paid to incentivize an individual  
14 to knowingly surrender the choice to keep that app  
15 activity private. 06:18:24

16 So when I think of that, I think of,  
17 you know, what -- what would -- what would an  
18 appropriate price be for someone to give up a peace  
19 of mind. In other words, if I don't know if I'd  
20 call it emotional distress, but I think of it more 06:18:37  
21 as like peace of mind for giving up that  
22 information.

23 Q. So I just want to be clear. The analysis  
24 you conducted here is an economic analysis, right?  
25 You're measuring economic damages? 06:18:51



1 A. Monetary damages, correct. Yes. 06:18:54

2 Q. Okay. So if we accept the premise that

3 that and emotional distress damages are different

4 things, would you agree with me that you're not

5 opining on what emotional distress damages would 06:19:06

6 be?

7 A. If -- if you accept the premise that

8 those are different things, then yes.

9 Q. Okay.

10 A. I would agree with that. 06:19:16

11 Q. Are there any other forms of actual

12 damage that you attempted to measure other than

13 what is in your report?

14 A. No, I did not. Nothing more than what is

15 in my report. 06:19:29

16 Q. You did, for example, attempt to measure

17 the cost to class members of the risk of identity

18 theft or some other privacy risk?

19 A. That is correct. I did not.

20 Q. And you did not attempt to measure the 06:19:42

21 cost of a raised risk of data leaks from a data

22 breach?

23 A. That -- that is correct. I did not

24 calculate that.

25 Q. Okay. So -- 06:19:57

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1 A. Well -- 06:20:00

2 Q. Go ahead.

3 A. Now, just to be clear, to the extent that  
4 people are worried about that, I believe that that  
5 is captured in the \$3 here. 06:20:10

6 And so to me, that calculation -- a  
7 market-based price captures what a person would be  
8 worried about. And those are two things that make  
9 sense for a person to be worried about if they're  
10 giving up more data. 06:20:24

11 Q. Fair. Fair point.

12 So did you do anything to analyze the  
13 named plaintiffs' testimony to determine whether  
14 they indicated what a market price would be for  
15 their data? 06:20:49

16 A. I did not look at the named plaintiffs'  
17 testimony as it related to that.

18 Q. You would agree with me that the best  
19 measure of a market price or a fair price here --  
20 by the way, "market price" is a term you just used. 06:21:13  
21 Is that different from "fair market value" and  
22 "fair price," which are terms we described before?

23 A. I think that -- I think "fair price" is  
24 different than -- from "fair market value."

25 So I think -- I think, thinking about 06:21:26

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1 this, as far as an appropriate price like I 06:21:29  
2 described it in my report is the way to -- the way  
3 to say it.

4 I may slip up every once a while because  
5 I use "market value" and "fair market value" in 06:21:37  
6 other contexts. But I'm using what I'm -- what I'm  
7 talking about here in my report.

8 Q. Okay. So would you agree with me that  
9 the best measure of the fair price in your actual  
10 damages opinion is going to be prior economic 06:21:50  
11 transactions that are similar to the one that  
12 you're hypothesizing?

13 A. Based on data available in this case,  
14 yes, I agree that that is -- like the study that  
15 I'm relying upon in this case. 06:22:13

16 Q. You are aware that Google Analytics for  
17 Firebase is not the only conversion tracking or  
18 analytics product on the market for mobile apps?

19 A. I am aware of that, yes.

20 Q. There are others that are produced and 06:22:27  
21 serviced by companies other than Google?

22 A. That is my understanding, yes.

23 Q. You're aware that sometimes mobile apps  
24 will use multiple analytics products in the same  
25 app? 06:22:40

1 A. That is consistent with my understanding. 06:22:43

2 Q. So fair to say at least some of the class  
3 members in this class, for example, used apps that  
4 used both Google Analytics for Firebase and a  
5 third-party analytics solution? 06:22:58

6 A. I don't know if that's fair to say or  
7 not. That may have happened.

8 Q. Well, it's a class of 90 million people.  
9 Do you have any reason to doubt that that -- some  
10 people in the class are in that category? 06:23:14

11 A. No, I do not.

12 Q. People in that category who used an app  
13 that used both Google Analytics for Firebase and,  
14 let's say, AppsFlyer as an example of a third-party  
15 analytics solution, is it fair to say that those 06:23:32  
16 people have entered into a transaction with the app  
17 that uses both of those analytics solutions, they  
18 are giving up data in exchange for using the app?

19 And assume for me that the app is  
20 disclosing it, so it is not hidden to them. 06:24:05

21 A. So the app -- the app is disclosing that  
22 they're giving up their data in exchange for using  
23 the app?

24 Q. Yeah. So, I mean, you use a mobile  
25 phone, right? 06:24:21

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1 A. Yes, I do. 06:24:22

2 Q. Sometimes you download an app, you  
3 install it, you open it up, it says "click here to  
4 agree to our privacy policy and terms of use," you  
5 say yes, and now you use the app, right? 06:24:30

6 A. Correct.

7 Q. So assume for me that some of those  
8 privacy policies disclosed the use of analytic  
9 solutions from Google, from other companies,  
10 sometimes more than one at once, sometimes just 06:24:41  
11 Google, sometimes other companies. Okay?

12 Assume that for the moment.

13 A. I think -- I think I'm following you.

14 Q. With respect to the data generated in  
15 those apps that do that, isn't the user agreeing to 06:24:56  
16 give up their analytics data in exchange for using  
17 the app?

18 As an economic matter, isn't that the  
19 transaction that's occurring?

20 A. To -- to that specific app? 06:25:22

21 Q. Uh-huh.

22 A. If -- if -- I think I'm following you.  
23 But if it was disclosed and it said you're giving  
24 up your data, and the user downloaded the app and  
25 used it, then yes. They are giving their data -- 06:25:36

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1 they are allowing that data to use their -- they 06:25:40  
2 are allowing that app to use their data in exchange  
3 for using the app.

4 I mean, I hope you're not trying to trick  
5 me here. You're just telling me, like, assume 06:25:50  
6 these four facts.

7 Q. Yes. I'm not trying to trick --

8 A. And I'm just assuming them.

9 Q. You should.

10 A. Okay. 06:25:59

11 Q. I mean, I could show a privacy policy  
12 from a random app if you want, but I think you can  
13 just assume it, and it's easier that way.

14 MR. LEE: Is WAA on or off in this  
15 scenario? 06:26:09

16 MR. SANTACANA: I didn't specify for that  
17 user. That's where we'll go now, next.

18 MR. LEE: Right. Okay. Well, then, no  
19 objection so far.

20 Q. (By Mr. Santacana) So now imagine the 06:26:17  
21 same user we were just talking about has a Google  
22 account, and their sWAA is set to off.

23 A. Okay.

24 Q. And they install this app on their  
25 Android phone. The app says we use 06:26:32

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1 Google Analytics and we use this other third-party 06:26:36  
2 as well for analytics. Okay?  
3 With me so far?  
4 A. I think so.  
5 Q. So this SWAA-off user, according to the 06:26:44  
6 plaintiffs, has indicated that they do not want  
7 that analytics data to be used by Google, but  
8 there's no such restriction on the use of the  
9 third-party analytics service by the app. Right?  
10 That's not a claim the plaintiffs are making; fair 06:27:04  
11 to say?  
12 A. I think I'm following you.  
13 Q. Isn't the user's decision in that moment  
14 to use the app a fair indication of how much the  
15 user values the data in question, given that they 06:27:24  
16 would be providing the same data, or the app would,  
17 to the two different analytics providers?  
18 MR. LEE: Objection to form.  
19 THE DEPONENT: No.  
20 Q. (By Mr. Santacana) Why not? 06:27:36  
21 A. Well, one person may -- one person may,  
22 in this hypothetical, choose to allow the app to  
23 use their private information, knowing certain  
24 things about the app, knowing certain things about  
25 how the app would that data. 06:27:57

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1 But then they could still have a deal 06:27:59  
2 where they don't want someone else to use that  
3 information. And if they have a deal, in this  
4 case, with Google, for example, they may say no,  
5 that information is not something that I'm willing 06:28:11  
6 to share with Google.

7 And there would be a price -- before I  
8 would share that information with Google, there  
9 would be a price that someone would charge for that  
10 information. 06:28:24

11 Q. So it's possible for the same SWAA-off  
12 user to, in this hypothetical, demand a price from  
13 Google for their analytics data but no price from  
14 the app or the third-party analytics provider that  
15 the app also uses. Fair? 06:28:41

16 A. No, that's not -- that's not fair.  
17 They -- they are -- they are getting value.

18 Q. By using the app?

19 A. Correct.

20 Q. Okay. So when this user chooses to use 06:28:51  
21 the app, there is a bargain with the app where they  
22 agree to the app's usage of analytics providers in  
23 exchange for using the app and no money, right?

24 A. This is the hypothetical that you're  
25 posing to me. So you're -- you're saying "right," 06:29:21

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1 but you telling me to assume that. So yes. 06:29:24

2 Q. Well, but -- right.

3 So my curiosity is about your answer

4 where you said that it's not possible that the same

5 sWAA-off user in this hypothetical will demand a 06:29:37

6 price from Google but not from the app or from the

7 third-party analytics provider.

8 And you said the reason it's different is

9 because they are getting value out of the app.

10 So now I'm just trying to put the value 06:29:48

11 of the app into the hypothetical.

12 Does that make sense?

13 A. I think so.

14 Q. So what is the difference, as an economic

15 matter, between the user providing their data to 06:30:05

16 Google and the user providing their data to a

17 third-party analytics provider that is not Google?

18 A. So, again, that third -- that

19 third-party, depending on -- depending on the

20 disclosure, may believe that they're getting a 06:30:35

21 value for the app.

22 Like, for example, I know if I sign up to

23 some of these policies, sometimes they won't charge

24 me for the app. It would be like --

25 Q. Right. 06:30:53

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1           A.     -- or it's ten bucks if I want to                                 06:30:53  
2     download the app. Well, I didn't get any money,  
3     but I saved \$10.

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4           So to me, when you saved $10, you'd say,
5 wait, okay, I got value for my data.                                06:31:05
```

|   |         |
|---|---------|
| 6 | Q. Yes. |
|---|---------|

7                   A.     And so I don't -- economically, it's  
8     similar.

9                   And in this case, when you brought Google  
10       into -- into the equation, they signed up for a                   06:31:21  
11       privacy policy with Google knowing that they signed  
12       that policy, in this case, sWAA off.   And my  
13       understanding is the expectation of that is they  
14       would not collect, save, or use that data then.

15 Q. So what I'm focused on is the language in 06:31:47  
16 your paragraph 130 where you say that you're trying  
17 to identify the payment necessary to incentivize  
18 the individual "to knowingly surrender the choice  
19 to keep activity on mobile apps private and allow  
20 an organization to track app activity data." 06:32:06

21                   Was your task here generic as to who  
22       receives the data, or was it specific as to Google?  
23       And is there a difference?

24           A.     Here, I think it is specific as to

25     Google. And certainly, there could be --                                 06:32:30

1 certainly, there could be a difference in what 06:32:38  
2 someone is willing to accept for providing the  
3 information.

4 Q. Depending on who they are providing it  
5 to? 06:32:48

6 A. That -- yes.

7 Q. So the same user may demand \$3 per device  
8 from Google, but nothing from AppsFlyer, for  
9 example? That's possible --

10 A. Well -- 06:33:02

11 Q. -- as an economic matter?

12 A. I don't know that that's possible. I  
13 mean, at -- at the end of the day -- at the end of  
14 the day, when people share their data, oftentimes  
15 they are assuming that they're going to get value 06:33:15  
16 for that.

17 So -- so you say you're getting nothing,  
18 but if you provide -- if you go through that policy  
19 that you're talking about -- if you go through that  
20 policy that you're talking about with a third-party 06:33:30  
21 app that uses that service, they got value for  
22 that.

23 I -- in your hypothetical, I think what  
24 you're saying is, well, if that -- that analytics  
25 company called them up and said, "Hey, give me your 06:33:45

1 data," I can't imagine that there would be anyone 06:33:48  
2 that would just say, "Here, here's some free data."  
3 Q. I see. Fair enough. It's not quite what  
4 I was imaging, but that's helpful.  
5 I guess where I'm confused is that you 06:34:00  
6 are attempting to measure the difference between  
7 that class member's economic position in real life  
8 and in a world where the plaintiffs' view of SWAA  
9 had been honored, right?  
10 What is the difference in their economic 06:34:56  
11 position; that's how you're determining actual  
12 damages?  
13 A. I think you're saying -- yeah, where it  
14 was taken for free, for nothing.  
15 Q. Right. Or against -- allegedly against 06:35:13  
16 their will according to their SWAA setting?  
17 A. That is correct. That's -- that's what  
18 my understanding is.  
19 Q. But the exact same data could have been  
20 taken by a third-party analytics company with whom 06:35:24  
21 the user has no relationship, and the user accepted  
22 that in exchange for using the app?  
23 A. Under your scenario --  
24 Q. Yes.  
25 A. -- yes. 06:35:39

1 Q. Do you see any contradiction there? 06:35:40

2 A. No.

3 Q. Why not?

4 A. Because, again, for -- for a number of

5 reasons. 06:35:47

6 First, a user can enter into a  
7 transaction with one entity and another entity for  
8 that exact same data and charge different amounts.  
9 That's the user's prerogative. That happens all  
10 the time in transactions. 06:36:06

11 You -- you seem to be keep indicating  
12 that they gave it away for free, but they did  
13 not --

14 Q. Well, for the app.

15 A. Yeah. But the app is not free. 06:36:16

16 Q. Go ahead.

17 A. The app might be free, but they got value  
18 for that. And so it's not -- it's -- it's a  
19 transaction. It's -- it's a bargain. It's a  
20 transaction. And there's a monetary value for 06:36:35  
21 being able to use an app.

22 Q. How do you measure that value?

23 Or do you, in this case, measure that  
24 value?

25 A. Now, what value are you talking about 06:36:51

1       there? 06:36:53

2           Q.    The monetary value for being able to use  
3       an app.

4           A.    I have not measured it in this -- in this  
5       case. I mean, I know one way that way people 06:37:02

6       measure those such things is some apps -- some apps  
7       have free versions. Some apps will give you  
8       additional features, and they'll make -- charge you  
9       more. Some apps just charge right out of gate.

10                So how do you measure the value -- how do 06:37:17  
11       you measure the value of the app? You can look to  
12       market transactions, just like what I did here is  
13       look to a market-based transaction.

14           Q.    Well, the market-based transaction you  
15       looked at here is very different in kind than the 06:37:33  
16       market-based transaction that's happening every day  
17       when users download apps, agree to privacy policies  
18       that disclose analytics services, and use the app  
19       and get that value.

20                And I guess what I'm trying to get at is, 06:37:48  
21       why didn't you consider that in your analysis of  
22       market transactions?

23                Every day, there are probably of hundreds  
24       of millions of agreements entered into between end  
25       users and app developers where the user agrees to 06:38:11

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1 give up data to analytics in exchange for using the 06:38:15  
2 app.

3 Why didn't you take those market  
4 transactions into account when looking for a  
5 comparable? 06:38:24

6 A. For two -- for two reasons.

7 One is, I have a very good comparable  
8 here with -- with Ipsos Screenwise, as well as the  
9 other ones that I talked about here. You're --  
10 you're talking about going out and analyzing 06:38:46  
11 hundreds of millions of transactions, which would  
12 cost a significant amount of money and I'm not sure  
13 that would end up with any better information than  
14 what I had here.

15 And in those cases, you would have to 06:39:02  
16 make assumptions about how each individual valued  
17 the app that they downloaded and gave up their data  
18 for. That is -- in my opinion, as I sit here  
19 today, that would probably be a less valuable  
20 exercise than relying upon what I did -- than what 06:39:25  
21 I did here.

22 I would say it would rely -- would result  
23 in less reliable data than what I did here.

24 Q. In the negotiation that you posit in your  
25 actual damages opinion, you theorize that Google 06:39:52

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1 and the user would reach the amount of \$3. The 06:39:59  
2 user gives up certain data and, in exchange,  
3 Google Pays \$3, and you believe that's the fair  
4 price for the certain data, right?

5 A. Per device. 06:40:12

6 Q. Per device. That's right.

7 Did you take into account in analyzing  
8 this hypothetical transaction between Google and a  
9 user the restrictions that there would be on  
10 Google's use of the data the user is giving up or 06:40:33  
11 the degree to which it is restricted, if at all?

12 MR. LEE: Objection. Form.

13 Q. (By Mr. Santacana) I'll come back to it.

14 Let me ask you this: You understand  
15 Google doesn't personalize ads with sWAA-off data, 06:41:03  
16 right?

17 A. That is my understanding, yes.

18 Q. What it does do, according to the  
19 plaintiffs and Mr. Hochman, is recordkeeping  
20 surrounding advertising. It takes account of the 06:41:17  
21 ads that it shows, the ads that get clicked on, and  
22 conversions that are made, even if the user has  
23 sWAA off.

24 That's the claim in the case, right?

25 A. Well, that's certainly part of the claim. 06:41:35



1 That's correct. 06:41:37

2 Q. But it's not the case that Google does  
3 personalizing of advertising or targeting with that  
4 same information, right?

5 That's your understanding? 06:41:44

6 A. That -- for sWAA-off --

7 Q. Right.

8 A. -- users. That is -- that is correct.

9 Q. For sWAA-on users, it can personalize  
10 advertising, right? 06:41:57

11 A. For sWAA-on -- I believe that it can,  
12 yes. I'm not 100 percent sure. I guess it would  
13 depend on the -- on the particular user. If the  
14 user had GAP off, then no, I guess it couldn't.

15 Q. Does your hypothetical \$3 fair price take 06:42:14  
16 into account that distinction, that Google, even  
17 though it's getting the data from that user, can  
18 only use it for this accounting purpose. It cannot  
19 use it to personalize ads?

20 Is that a restriction on the use of the 06:42:30  
21 data that you've taken into account in arriving at  
22 your \$3?

23 A. Yes.

24 Q. So if Google could use it for  
25 personalization, presumably the \$3 figure would be 06:42:38

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1 higher? 06:42:43

2 A. It certainly could be higher. That is  
3 correct.

4 Q. Okay. And if Google couldn't use it for  
5 anything, it was just, "Here's my data," and then 06:42:53  
6 Google just lights it on fire and throws it in the  
7 ocean, then presumably the price would be lower  
8 than \$3?

9 I'm just trying to understand the  
10 dynamics of this transaction. 06:43:07

11 A. I guess I'm really not understanding,  
12 like -- like, if you give someone your data, and  
13 they light it on fire and send it into the ocean --  
14 and send it into the ocean.

15 Q. Then you'd probably agree to that for 06:43:20  
16 less money?

17 A. I -- that is possible. I am not  
18 100 percent sure. That seems like a weird  
19 hypothetical that I can't really fathom anyone  
20 would enter into, but -- 06:43:36

21 Q. No pun intended.

22 A. -- possible.

23 Q. I guess what I'm trying to get at is, it  
24 seems to me, at least, that in this transaction you  
25 hypothesize, one of factors that would drive the 06:43:51

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1 price up or down is what Google's going to do with 06:43:54  
2 the data, right?  
3 MR. LEE: Objection to form.  
4 Mischaracterizes.  
5 THE DEPONENT: I -- I mean, I don't -- I 06:44:07  
6 don't necessarily think that would drive it up or  
7 down, what Google is going to do to the data.  
8 I think that what I'm talking about here  
9 is you need to incent someone to part --  
10 incentivize someone to part with their data. And 06:44:25  
11 to part with that data is what I'm talking about  
12 here.  
13 Q. (By Mr. Santacana) Well, okay. But a  
14 moment ago, you said if Google is going to use it  
15 for personalization, that would drive the price up? 06:44:35  
16 A. It could. You're asking about a  
17 hypothetical. It could -- it could drive it up.  
18 I -- I'm trying to answer your questions.  
19 I did a specific analysis based on what  
20 actually happened. That didn't actually happen. 06:44:47  
21 But...  
22 Q. Well --  
23 A. You're asking me about hypotheticals, and  
24 I'm trying to answer them as best I can.  
25 Q. Your opinion attempts to characterize 06:44:55

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1 what a user who does not exist would be willing to 06:45:01  
2 accept in dollars in exchange for data that in real  
3 life was collected and used by Google, right?

4 That's your task here?

5 A. Well, I think that the users do -- I 06:45:16  
6 mean, there's -- there's a large class of users  
7 that do exist.

8 Q. I'm sorry.

9 A user who exists but who didn't actually  
10 have a chance to have this negotiation with Google, 06:45:24  
11 right?

12 A. That is correct.

13 Q. And you're trying to figure out what  
14 would it take to get them to part with the data?

15 A. That -- that's what I'm calculating here 06:45:35  
16 is what it would take for them to part with the  
17 data.

18 Q. So if Google says, I'll pay you \$3, and  
19 then I'm going to publish the data on Reddit, okay,  
20 isn't that a different deal than I'll give you \$3, 06:45:49  
21 but I'm only going to use it for advertising and  
22 bookkeeping purposes?

23 MR. LEE: Objection. Incomplete  
24 hypothetical.

25 Q. (By Mr. Santacana) It matters what 06:46:08

1 Google is going to use it for? 06:46:09

2 A. To some -- to some extent, yes, that  
3 makes sense.

4 Q. Okay. So did you describe in your report  
5 or come to any reasoning about what impact Google's 06:46:16  
6 use of the data would have on the price, this \$3  
7 price?

8 MR. LEE: Asked and answered.

9 THE DEPONENT: I mean, again, I know how  
10 they're -- I know how they're using the data. I 06:46:33  
11 have, obviously, the information that was provided  
12 to me.

13 So yes, I -- I looked at that. I looked  
14 at that, and I compared it to the Ipsos study.

15 Q. (By Mr. Santacana) Right. 06:46:47

16 A. And then I determined that a \$3 price was  
17 appropriate per device --

18 Q. The Ipsos study --

19 A. -- in this case.

20 Q. I'm sorry. Go ahead. 06:46:53

21 A. For this case.

22 Q. The Ipsos study terms allow Google to use  
23 the participants' data for personalized  
24 advertising, right?

25 A. That is correct. 06:47:08

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1 Q. And those terms allow Google to join the 06:47:08  
2 data with other data Google has about that person,  
3 right?

4 A. That is correct. Yes.

5 Q. Okay. The terms of the transaction that 06:47:16  
6 you're hypothesizing in paragraph 130, 131 and 132  
7 would not permit that, right?

8 A. Well, that -- that is my assumption, yes.  
9 No, it would not. They do not -- they do not get  
10 personalized ads right now, so I would not expect 06:47:49  
11 that they would expect that they would all of a  
12 sudden start receiving personalized ads. That's  
13 correct.

14 Q. So did you adjust the Ipsos price  
15 downward to reflect that greater restriction on the 06:47:59  
16 use of the data?

17 A. No, one wouldn't -- I would not need to  
18 do that, no.

19 Q. Why not?

20 A. Because here, again, in the Ipsos -- we 06:48:05  
21 talked about this earlier.

22 In Ipsos study, we are talking about  
23 willing participants versus unwilling participants.

24 So the WAA-off/swAA-off users are  
25 unwilling participants in this. 06:48:21

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1           They are collecting, meaning Google is           06:48:25  
2     collecting, data that participants believe --  
3     participants believe that is -- that participants  
4     have gone through the steps that indicate that that  
5     data is important to them, and they do not want it           06:48:52  
6     shared. That's not the case in the Ipsos study.

7           So making an additional adjustment to  
8     what I've made, where here, we're talking about the  
9     device, specifically the device, and Ipsos pays \$3  
10    for the device but then pays -- but then pays           06:49:12  
11    additional dollars on top of that for some of the  
12    information that you were talking about earlier, I  
13    don't believe that I need to make any adjustments,  
14    because here we're talking about device to device.

15           Q.    I don't understand your answer.           06:49:41

16           The transaction in Ipsos gives Google a  
17    wider latitude for what it can do with the data  
18    than the transaction you're hypothesizing.

19           Did that play any role in the amount of  
20    money that you ultimately concluded this           06:49:55  
21    hypothetical transaction would arrive at as a fair  
22    price?

23           A.    I don't know how to answer that other  
24    than what I've answered before. In this -- in the  
25    Ipsos study, Google pays market participants in a           06:50:12

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1 number of different ways, not just on a -- not just 06:50:19  
2 on a per device.

3 They pay money for their Web browser.  
4 They pay money for devices. They pay money for  
5 using a router. They pay money for all these other 06:50:31  
6 things.

7 But once you get down to the device  
8 level, you're -- what -- in my opinion collecting  
9 similar information. And that similar -- and that  
10 similar information, the best market data point is 06:50:45  
11 the \$3 -- the \$3. They've already been compensated  
12 for those -- that other use of the data.

13 Q. Okay. I need you to listen carefully to  
14 this question, because I understand your answer,  
15 but then my question's different. 06:51:05

16 Did the difference in the terms of the  
17 transaction regarding what Google could do with the  
18 data, did it play a role in the amount of money you  
19 ultimately concluded the hypothetical transaction  
20 in this case would arrive at? 06:51:23

21 Did it play a role? I just want to know.

22 A. Well, I think I just answered that with  
23 what I just said, but --

24 Q. Well, what you said summarized your whole  
25 opinion. 06:51:34



1 A. -- yes. 06:51:34

2 Q. I want to know if this was one of the  
3 factors that you considered, and, if so, what role  
4 it played.

5 A. I -- I just said. But yes, it -- it is 06:51:42  
6 one of the things that I considered in my -- in my  
7 analysis.

8 Q. And what role did it play? Did it drive  
9 the price up or did it drive it down?

10 MR. LEE: Objection to form. 06:51:57

11 THE DEPONENT: Well, as we know, in -- in  
12 this case, they -- I am assuming that these users  
13 will get paid less than what they get paid in the  
14 Ipsos study.

15 So there are -- there certainly is a 06:52:09  
16 lower amount of compensation that I put to a user  
17 relative to what they would get in the Ipsos study.  
18 And so that -- yes, that is one of things that I  
19 considered when I was selecting the \$3 in this  
20 case. 06:52:27

21 Q. (By Mr. Santacana) How much lower did it  
22 drive the price?

23 A. I did not quantify specifically how much  
24 lower that particular aspect drove the price.

25 Q. Did you quantify in your report or in 06:52:44

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1 some other way how much any factor in particular 06:52:47  
2 affected the price?  
3 A. Yes.  
4 Q. Where?  
5 A. I mean, it's in -- it's what I talk about 06:53:00  
6 in my "Actual Damages" --  
7 Q. Show me.  
8 A. -- section.  
9 So, again, ultimately what I'm -- what  
10 I'm selecting here is mobile phone price, \$3, and 06:53:23  
11 tablet price of \$3. I'm not including the router.  
12 I'm not including the browser. I'm not including  
13 the \$2 bonus. I'm not including the hundred  
14 dollars for installing a router.  
15 Any of those -- any of those additional 06:53:43  
16 compensations -- compensation that is paid to a  
17 user, I'm not including that.  
18 Q. My question was a little different.  
19 Let me -- let me try and ask it a  
20 different way. 06:53:58  
21 In any negotiation, there are factors  
22 that will drive the price up and factors that will  
23 drive it down, right?  
24 A. That -- yes.  
25 Q. Fair to say? 06:54:12

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1 A. That is correct. 06:54:12

2 Q. Okay. So as you are trying to determine  
3 how to incentivize a class member to part with the  
4 data, there will be factors that come into that,  
5 right? 06:54:21

6 A. I -- I think -- I think you're talking  
7 about any transaction, whether or not it's this  
8 transaction or any other transaction.

9 Q. Did you quantify any specific factor as  
10 to its impact on the ultimate price for this 06:54:36  
11 transaction, or was it more of a totality of the  
12 circumstances-type conclusion about the \$3?

13 MR. LEE: Asked and answered.

14 Q. (By Mr. Santacana) I mean, I don't think  
15 you did. I don't think there's a table that says 06:54:55  
16 this factor, minus \$1; this factor, minus 12 cents.  
17 That's not in here.

18 I'm just asking you if it's somewhere  
19 else or if I misread it.

20 THE DEPONENT: No, if you're asking if 06:55:04  
21 there's a table like that that's in my report, it's  
22 not in my report, as you know.

23 And I don't have any similar table  
24 somewhere else.

25 Q. (By Mr. Santacana) How did you calculate 06:55:13

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1 the \$3 payment per device? 06:55:14

2 A. Again, as we -- we talked about, I looked  
3 at this -- this analysis, the Ipsos study, as well  
4 as the other studies that I talk about in my actual  
5 damages. I determined, based on the comparability 06:55:36  
6 of specifically the Ipsos study as it relates to  
7 mobile phones and tablets, so devices, of \$3 as --  
8 I believe that that's an appropriate one-time  
9 payment per device based on the information that  
10 was available to me here. 06:55:58

11 Q. Why isn't the \$3-per-device price that  
12 you arrived at higher than what the Ipsos study  
13 pays participants?

14 You say the Ipsos study is willing  
15 participants. This is unwilling -- 06:56:31

16 A. Yes.

17 Q. -- participants.

18 So shouldn't these unwilling participants  
19 get paid more?

20 MR. LEE: Asked and answered. 06:56:38

21 THE DEPONENT: I think I answered that  
22 before. But I do believe that this is a  
23 conservative value for those -- for the Ipsos  
24 studies.

25 Q. (By Mr. Santacana) What does 06:56:45

1 "conservative" mean in that sentence? 06:56:45

2 A. It means that it could be -- it could, in  
3 fact, be higher. But I think that this is an  
4 appropriate price to incentivize based on what I  
5 said -- based on what I said before, to incentivize 06:56:55  
6 those users to part with their data.

7 Q. Would \$4 be an appropriate price?

8 MR. LEE: Objection to form.

9 THE DEPONENT: I -- I did not do an  
10 analysis of \$4, so I don't know the answer to that. 06:57:06

11 Q. (By Mr. Santacana) What do you mean you  
12 did not do -- you did an analysis and came up with  
13 a number. So presumably, you considered all  
14 numbers that exist, and you arrived at one of them  
15 and said, "This is the answer." 06:57:16

16 So I'm just saying, why did you rule out  
17 \$4?

18 A. Ultimately, I've got a market transaction  
19 here that shows \$3.

20 Q. Per month, which you deviated from? 06:57:25

21 A. Correct.

22 Q. So why didn't you say \$4?

23 A. Because --

24 MR. LEE: Asked and answered.

25 Go ahead. 06:57:37

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1 THE DEPONENT: Because based on the 06:57:37  
2 totality of the information available to me, as we  
3 talked about earlier in the deposition, I think  
4 that -- I think that \$3 is an appropriate amount.  
5 A one-time payment of \$3 is an appropriate amount. 06:57:48  
6 Q. (By Mr. Santacana) So you would agree  
7 with me that \$4 is too much?  
8 MR. LEE: Mischaracterizes testimony.  
9 THE DEPONENT: Again, I think \$3 is  
10 conservative. Could be it higher than \$3? Yes. 06:58:03  
11 It could be --  
12 Q. (By Mr. Santacana) Could be it lower?  
13 MR. LEE: Hold on. Let him finish.  
14 THE DEPONENT: Could it be higher than  
15 \$3? Yes. No, I do think it could be lower than 06:58:09  
16 \$3.  
17 Q. (By Mr. Santacana) So \$3 is the lowest  
18 number that you could come up with?  
19 A. \$3 per device. I don't think that I  
20 would come up with a number lower than that. I 06:58:19  
21 did -- I would not come up with a number lower than  
22 that.  
23 Q. Are there members of the class who you  
24 would expect would demand more than \$3 if they had  
25 the opportunity to engage in this negotiation? 06:58:34

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1 MR. LEE: Calls for speculation. 06:58:42

2 THE DEPONENT: I don't -- I don't know

3 the answer to that. I didn't analyze that.

4 Certainly, I think \$3 is an appropriate price to

5 incentivize the class members to part with their 06:58:58

6 data, as I said.

7 Q. (By Mr. Santacana) Does that mean that

8 there is no member of the class, in your opinion,

9 who would require more than \$3 to be incentivized

10 to part with their data? 06:59:16

11 MR. LEE: Calls for speculation.

12 THE DEPONENT: I don't -- I don't -- I

13 mean, again, I didn't do an analysis of that, so I

14 don't -- I don't know the answer to that.

15 Q. (By Mr. Santacana) Well, you said \$3 is 06:59:24

16 an appropriate price to incentivize the class

17 members.

18 A. That is correct.

19 Q. Doesn't that imply that there can't be a

20 class member who would need \$3.01? Otherwise, your 06:59:32

21 number would be wrong, right?

22 A. I think -- I think if you're -- if you're

23 talking about the precision of \$3 versus \$3.01 --

24 Q. Okay. \$3 versus \$3 trillion. How do you

25 know there isn't a class member who requires 06:59:48

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1 \$3 trillion? 06:59:51

2 MR. LEE: Objection --

3 Q. (By Mr. Santacana) You understand my  
4 question, right?

5 MR. LEE: Objection -- hold on. 06:59:54

6 Objection. Mischaracterizes the model.

7 THE DEPONENT: I don't -- I'm not aware  
8 of Google offering anyone \$3 trillion for their  
9 data.

10 Q. (By Mr. Santacana) But part -- 07:00:08

11 A. But --

12 MR. LEE: Hold on.

13 Q. (By Mr. Santacana) Go ahead.

14 A. But if they did, I -- I would assume that  
15 someone would likely take that. 07:00:14

16 Q. So in paragraph 132, you say that the  
17 factors that matter are Google's payments,  
18 historical payments, for user data; users'  
19 willingness to pay to prevent data collection; and  
20 research organizations' willingness to pay for data 07:00:32  
21 collection.

22 Did you take into account at all what  
23 users accept in exchange for data collection? Or  
24 is that just implied in the payments Google makes?

25 A. What users accept, I know what users -- I 07:00:53

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1 know at least some set of users -- 07:00:55

2 Q. Okay.

3 A. -- are willing to accept, because I know  
4 what's going on in the Ipsos study.

5 Q. Okay. And in your mind, is the Ipsos 07:01:01  
6 study representative of all similarly situated  
7 users?

8 A. I don't know if it's all similarly  
9 situated users, but I do think it's -- it's a good  
10 comparable to use in this case. 07:01:22

11 Q. So then I return to my question, which  
12 is, how do you know that there aren't some  
13 significant chunk of the class -- let's say,  
14 privacy fundamentalists -- who would refuse to part  
15 with their data at \$3, just flat-out refuse, 07:01:44  
16 absolutely not. Not \$4. Not \$5. Maybe \$100.

17 How do you know there aren't people like  
18 that in the class?

19 A. Well, if you're asking me if I did a  
20 study of the class, I did not do a study of the 07:01:57  
21 class. So I think --

22 Q. I'm asking --

23 A. So I think -- I think, when you look at  
24 the class as a whole, and you think about what  
25 would be appropriate to incentivize class members 07:02:09

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1 to part with their data, the data points that are 07:02:15  
2 most important or that are most reliable, based on  
3 the information available, are the Ipsos study data  
4 points.

5 Q. Do you know what a privacy fundamentalist 07:02:27  
6 is?

7 A. Yes.

8 Q. Do you think they would take \$3?

9 MR. LEE: Calls for speculation.

10 THE DEPONENT: I don't know what they 07:02:35  
11 would take. I -- I have not surveyed them, as I  
12 stated earlier in my case.

13 Q. (By Mr. Santacana) Do you doubt --

14 A. In -- in my testimony, I should say.

15 Q. Do you doubt that there are privacy 07:02:47  
16 fundamentalist in this class?

17 A. No, I do not.

18 Q. Is it your opinion that a privacy  
19 fundamentalist in this class would accept \$3 in  
20 exchange for the at-issue data? 07:02:59

21 MR. LEE: Calls for speculation.

22 THE DEPONENT: I -- I mean, I just can't  
23 speculate on that. I don't know the answer to  
24 that. I did not do a survey.

25 Q. (By Mr. Santacana) So your opinion on \$3 07:03:09

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1 is meant to capture sort of a population average, 07:03:11  
2 conservative floor fair price; is that a fair  
3 characterization?

4 A. I think it's a conservative floor,  
5 appropriate price for the class -- for the class. 07:03:29  
6 Yes, I agree with that.

7 Q. But there may be people in the class who,  
8 if they could do it themselves, they'd negotiate a  
9 different price, maybe even a very different price?

10 MR. LEE: Calls for speculation. 07:03:45

11 THE DEPONENT: I don't know the answer to  
12 that.

13 MR. LEE: Can we get a time check,  
14 please?

15 THE VIDEOGRAPHER: Time is running, so I 07:03:52  
16 can give an approximation, which is 6 hours and  
17 28-ish minutes.

18 MR. LEE: Okay. Thanks.

19 Q. (By Mr. Santacana) Would you accept \$3  
20 for the at-issue data? 07:04:01

21 A. No, because I can't be part of the class.  
22 So --

23 Q. I said would you, not will you.

24 MR. LEE: Objection to form.

25 THE DEPONENT: I'm not -- I'm not going 07:04:13

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1 to answer what I would personally do or not do. 07:04:14

2 Q. (By Mr. Santacana) Why?

3 A. Because that's not none of your business.

4 That's not part of my report.

5 Q. Well, you're here under subpoena, and 07:04:22

6 it's a perfectly relevant question.

7 Would you accept \$3 in exchange for the

8 sWAA-off data at issue in the case?

9 MR. LEE: Beyond the scope.

10 THE DEPONENT: I'm not -- I'm not going 07:04:34

11 to answer that question. It's not part of my

12 report.

13 Q. (By Mr. Santacana) It doesn't matter if

14 it's part of your report or not. It's a relevant

15 question that goes to your credibility. 07:04:41

16 If you're opining in your report that \$3

17 is a fair price, but you yourself wouldn't accept

18 it, that is relevant.

19 So I'm going to ask it again: Would you

20 personally accept \$3 in exchange for the at-issue 07:04:51

21 data to Google?

22 MR. LEE: Beyond the scope.

23 Q. (By Mr. Santacana) Go ahead.

24 MR. LEE: I just said beyond the scope.

25 THE DEPONENT: I do not think that it's 07:05:01

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1 relevant. 07:05:02

2 Q. (By Mr. Santacana) It's not for you to

3 decide.

4 MR. LEE: It's not for you decide either.

5 THE DEPONENT: It's certainly not for you 07:05:06

6 to decide. I do not think it's relevant. It's

7 beyond of the scope of my report.

8 Q. (By Mr. Santacana) Do you have SWAA on

9 or off?

10 A. Again, that's also -- that's also not 07:05:15

11 part of my report, and that is not relevant.

12 Q. Do you have a Google account?

13 A. None of that is -- that is not relevant

14 here.

15 MR. LEE: This is all beyond the scope. 07:05:25

16 Q. (By Mr. Santacana) Are you refusing to

17 answer?

18 A. I'm refusing to answer questions that I

19 think are beyond the scope of my report.

20 Q. Okay. You understand you're under 07:05:33

21 subpoena, right?

22 MR. LEE: Are you trying to intimidate

23 the witness? I mean, he's already told you his

24 position. You've already told him he's under

25 subpoena. He's aware of that. He's -- he's been 07:05:45

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1       deposed before. He's told you his position.                     07:05:47

|   |                       |
|---|-----------------------|
| 2 | Ask another question. |
|---|-----------------------|

3 Q. (By Mr. Santacana) Do you understand  
4 you're under subpoena?

A. I understand that there's a subpoena in  
this case, yes.

7 Q. Did you review it?

8 A. Yes, I did.

9 Q. Was it limited in scope for subject  
10 matter? 07:06:01

11           A.    I -- you would have to show me the  
12 subpoena again.  I don't -- I don't recall.

|    |          |
|----|----------|
| 13 | Q. Okay. |
|----|----------|

14 MR. SANTACANA: I pass the witness.

15 MR. LEE: Okay. Let's take a break. 07:06:17

16 THE VIDEOGRAPHER: Off the record. The  
17 time is 7:05.

|    |                 |
|----|-----------------|
| 18 | (Recess taken.) |
|----|-----------------|

|    |   |          |
|----|---|----------|
| 19 | THE VIDEOGRAPHER: This marks the                |          |
| 20 | beginning of Media No. 8 in the deposition of   | 07:30:52 |
| 21 | Michael Lasinski. We're back on the record. The |          |
| 22 | time is 7:30.                                   |          |

23

24

25 | *//////* 07:31:00

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1 EXAMINATION 07:31:00

2 BY MR. LEE:

3 Q. Good afternoon, Mr. Lasinski. Again, my

4 name James Lee for Boies Schiller. And I just have

5 a few questions for you. Okay? 07:31:07

6 A. Okay.

7 Q. All right. Earlier today, you testified

8 that you understood ChromeGuard to relate to a

9 privacy setting that blocked Google and any other

10 third party from tracking conversions. 07:31:16

11 Do you remember that?

12 A. Yes.

13 Q. Here in this case, however, we're talking

14 about situations where an advertiser bids on a

15 conversion that is specifically tracked by 07:31:26

16 Google Analytics for Firebase.

17 Do you understand that?

18 A. Yes.

19 Q. And if that's the case, is it even

20 possible for another third party to track a 07:31:33

21 Google Analytics for Firebase conversion?

22 A. My understanding is it's not.

23 Q. I think you mentioned this earlier in the

24 day, but just to make sure that we have it clear,

25 does personalization of ads at all affect your 07:31:49

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1 calculation of unjust enrichment relating to 07:31:53

2 conversion tracking, which is your Scenario 1?

3 A. It does not, no.

4 Q. Okay.

5 Now, earlier today, you testified that 07:31:59

6 advertisers would spend less with Google if they

7 knew Google could not serve ads to sWAA-off users.

8 Do you remember that?

9 A. Yes.

10 Q. Is that because Google would not charge 07:32:12

11 advertisers to serve ads to sWAA-off users?

12 A. Yes.

13 Q. Now, Google's lawyer invited to imagine

14 how advertisers react if Google couldn't serve ads

15 to sWAA-off users. 07:32:26

16 Do you remember that?

17 A. Yes.

18 Q. And he asked you whether advertisers

19 would continue to spend the same amount of money

20 with Google by increasing their ad spend on sWAA-on 07:32:32

21 users.

22 Do you remember that?

23 A. I do, yes.

24 Q. Are you aware of any evidence suggesting

25 that advertisers would increase how much they would 07:32:41

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1 spend for sWAA-on ads in a but-for world? 07:32:44

2 A. No, I am not.

3 Q. Is it fair to say that sWAA-on users

4 don't necessarily get more ads just because Google

5 wants to serve them more ads? 07:32:54

6 MR. SANTACANA: Objection. Vague.

7 THE DEPONENT: That is my understanding,

8 yes.

9 Q. (By Mr. Lee) And is that because sWAA-on

10 users would only see more ads if they visit more 07:33:01

11 apps or spend more time in apps?

12 A. Yes, that is correct.

13 MR. SANTACANA: Incomplete hypothetical.

14 Q. (By Mr. Lee) Did Google conduct any

15 study suggesting advertisers would spend more for 07:33:10

16 sWAA-on ads in a but-for world?

17 A. Not that was produced in this case --

18 Q. Are you aware --

19 A. -- no.

20 Q. -- any of Google's rebuttal experts 07:33:21

21 preparing such a study?

22 A. No, I'm not.

23 Q. As far as you -- as far as you're aware,

24 does any such analysis exist?

25 A. It -- it does not. 07:33:30

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1 Q. Do you remember when, earlier today, 07:33:32  
2 Google's lawyer asked you whether you were trying  
3 to measure the damage in your unjust enrichment  
4 opinion -- you're trying to measure the profits  
5 that Google gained thanks to its alleged misleading 07:33:43  
6 of those plaintiffs?

7 A. Yes.

8 Q. And do you remember answering that's  
9 generally somewhat accurate?

10 A. Yes, I do. 07:33:53

11 Q. So I want to understand what part isn't  
12 accurate so that we're all clear. So let me ask  
13 you the following: Do your unjust enrichment  
14 models measure how much money Google made from  
15 making misrepresentations to Plaintiffs, or from 07:34:04  
16 collecting WAA- or SWAA-off data without their  
17 permission?

18 A. The latter.

19 Q. Is it fair to say the but-for world that  
20 your unjust enrichment models contemplate is the 07:34:16  
21 impact on Google's profits if it had not collected  
22 the WAA- or SWAA-off data that it's collected  
23 without permission?

24 A. Yes, it is.

25 Q. Okay. You were asked by Google's lawyer 07:34:26

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1 whether you considered what would have happened in 07:34:29  
2 a but-for world if a court did not allow GA for  
3 Firebase for sWAA-off users at the beginning of the  
4 class period.

5 Do you remember that? 07:34:40

6 A. Yes.

7 Q. And you said, "not beyond the scenarios,  
8 in your opinion."

9 Do you remember testifying to that?

10 A. I did, yes. 07:34:45

11 Q. All right. I want to talk about  
12 Scenario 1.

13 Is the measure of damages in Scenario 1  
14 the difference between Google using sWAA-off data  
15 for conversion tracking and Google not being able 07:34:55  
16 to use that data?

17 A. Yes, it is.

18 Q. Is the latter the but-for world you  
19 considered?

20 MR. SANTACANA: Vague. 07:35:05

21 THE DEPONENT: Yes, it is.

22 Q. (By Mr. Lee) Okay. Now, counsel for  
23 Google asked what advertisers would have done if  
24 Google could not perform a conversion tracking for  
25 sWAA-off users. 07:35:22

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1 Do you remember that? 07:35:23

2 A. I do, yes.

3 Q. Now, if advertisers did not have to pay  
4 Google for these untracked conversions, do you  
5 think they would take any steps to track those 07:35:29  
6 conversions just to pay Google more money?

7 A. No, they would not.

8 Q. If Google hired third-party trackers to  
9 do the tracking for it in that scenario, do you  
10 think that would be appropriate given Google's WAA 07:35:39  
11 and sWAA disclosures?

12 MR. SANTACANA: Calls for a legal  
13 conclusion. Vague. Compound.

14 THE DEPONENT: I do not.

15 Q. (By Mr. Lee) Do you recall being asked 07:35:49  
16 today some questions about the Ipsos study?

17 A. Yes, I do.

18 Q. Now, Google's lawyers suggested that the  
19 Ipsos study's terms allowed Google to use the data  
20 more broadly than -- than the sWAA-off button. 07:36:02

21 Do you remember that?

22 A. Yes.

23 Q. Did Google Pay Ipsos respondents an  
24 up-front fee for agreeing to the terms of the study  
25 beyond the \$3 that you isolated for your opinions? 07:36:12

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1 A. Yes, it did. It was \$20. 07:36:14

2 Q. And did you exclude that \$20 up-front fee  
3 in your damages calculation?

4 A. I did, yes.

5 MR. LEE: Thank you, Mr. Lasinski. I 07:36:21  
6 have no more further questions for now.

7 FURTHER EXAMINATION

8 BY MR. SANTACANA:

9 Q. Mr. Lasinski, you just testified that  
10 personalization of ads played no role in your 07:36:30  
11 Scenario 1 opinion?

12 A. That is correct, yes.

13 Q. Did personalization of ads play any role  
14 in any of your damages calculations?

15 A. No, it did not. 07:36:44

16 Q. Okay. Just making sure.

17 You were just asked the following  
18 question: "Do your unjust enrichment models  
19 measure money Google earned from misrepresentations  
20 or money Google earned from collecting data without 07:37:02  
21 users' permission?" [as read]

22 Do you recall that question?

23 A. I do recall that.

24 Q. And you said they measure the latter?

25 A. Correct. 07:37:12

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1 Q. Which is to say, money Google earned from 07:37:13  
2 collecting data without users' permission, right?

3 A. Correct.

4 Q. How do you know it was without users'  
5 permission? 07:37:23

6 A. Because my starting point for the class  
7 is WAA-off/SWAA-off users. So they did not have  
8 permission.

9 Q. How do you know that the data Google  
10 collected falls within the scope of what the SWAA 07:37:41  
11 button says it applies to?

12 A. Because I was informed technically what  
13 my scenarios should look like from Mr. Hochman.  
14 And so he provided me with the information on how  
15 to make my -- make those assumptions. 07:38:08

16 Q. Okay. So just to clear this up, you told  
17 me at the start of day that you wouldn't opine on  
18 what Google should or shouldn't do.

19 Do you remember that?

20 That's not your role here. 07:38:23

21 A. I don't -- I didn't -- I don't remember  
22 my testimony. But what Google or shouldn't do, I  
23 don't believe that that's necessarily my role.

24 Q. Nor is it whether Google is liable for  
25 anything in particular, right? 07:38:37

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1 A. Yeah, I'm not the liability expert, if 07:38:41  
2 that's what you're asking.

3 Q. On that subject, you were just asked  
4 something about if Google were to hire  
5 third parties to track conversions, would that be 07:38:48  
6 appropriate in light of the SWAA and WAA  
7 descriptions?

8 MR. LEE: Disclosures.

9 Q. (By Mr. Santacana) Disclosures.  
10 Do you recall that question? 07:39:00

11 A. Yes, I do.

12 Q. You answered that question, right?

13 A. I do, yes. I did.

14 Q. Are you now opining on what would or  
15 would not be appropriate for Google to do given the 07:39:12  
16 way that the SWAA and WAA disclosure are written?

17 MR. LEE: Objection. Form.  
18 Mischaracterizes.

19 THE DEPONENT: My -- what I'm -- what I'm  
20 testifying here is, I understand that they couldn't 07:39:27  
21 collect that information. So just hiring a  
22 third party to collect that information doesn't  
23 seem appropriate.

24 Q. (By Mr. Santacana) Why?

25 A. Because I don't know that that -- getting 07:39:36

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1 around the actual disclosures in that way to try to 07:39:39  
2 serve -- to try to use the information seems  
3 appropriate from a legal perspective -- from a  
4 common-sense perspective, I should say.

5 Q. Why? 07:39:51

6 A. That's my opinion.

7 Q. But why is -- is it an expert opinion  
8 you're offering in this case?

9 A. I was asked the question, so I don't  
10 believe that that's -- that is necessarily 07:40:04  
11 appropriate to do that.

12 Q. Okay. So you offered an answer to that  
13 question that's outside the scope of your expert  
14 opinions?

15 A. It's not -- that's not inside my report. 07:40:15

16 Q. That's just your personal opinion?

17 A. That's my personal opinion as an expert,  
18 yes.

19 Q. I don't understand what that means.

20 Is it an expert opinion in the case or 07:40:27  
21 not?

22 A. Well, I'm not a legal expert, so it's not  
23 a legal expert opinion. It's -- I'm the damages  
24 person, so that's what it -- it's my opinion.

25 Q. The question you were asked was: "If 07:41:04

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1 Google hired third-party trackers to do the 07:41:06  
2 tracking for it in that scenario, do you think that  
3 would be appropriate given Google's WAA and sWAA  
4 disclosures?"

5 And you answered, "I do not." 07:41:15

6 Is your answer to that question an answer  
7 you're providing as an expert in this case or as a  
8 person and private citizen who has a lay opinion?

9 MR. LEE: Asked and answered.

10 Go ahead. 07:41:31

11 THE DEPONENT: I mean, it's -- I'm -- I'm  
12 not an expert in that area, so it's not an expert  
13 opinion.

14 Q. (By Mr. Santacana) It's just your  
15 personal belief? 07:41:37

16 A. It's my personal opinion based on my  
17 information -- the information available to me in  
18 this case.

19 Q. Okay. If Google hired third-party  
20 trackers to do the tracking, and those third-party 07:41:45  
21 companies could not share any data with Google  
22 other than the number of conversions, would that be  
23 appropriate?

24 In other words, Google never sees the  
25 user data, just gets an accounting from an 07:42:02

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1 accountant. 07:42:04

2 A. I think you're -- you're asking -- you're  
3 asking me a question I -- I don't know the answer  
4 to that, as I sit here.

5 Q. Well, what more do you need to know to 07:42:14  
6 know if it's appropriate?

7 A. Well, you asked me a question whether or  
8 not Google hired a third party to collect data that  
9 they were told that they could not collect. That  
10 doesn't seem appropriate to me. 07:42:28

11 Q. That's the question that Mr. Lee asked  
12 you.

13 The question I'm asking you is, what if  
14 Google hired a third party to do conversion  
15 accounting for it and for its advertisers, and that 07:42:42  
16 third party counts up conversions and tells the  
17 advertisers how many conversions they have, and  
18 Google never sees the data.

19 In your view, is that appropriate in  
20 light of the WAA and sWAA disclosure? 07:42:55

21 MR. LEE: Objection. Incomplete  
22 hypothetical. Impossible hypothetical.

23 Q. (By Mr. Santacana) Go ahead. Is that  
24 appropriate in light of the disclosures?

25 A. I don't know how to answer that. 07:43:07

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1 Q. Well, you had no trouble answering 07:43:08  
2 Mr. Lee's hypothetical. Did you and --  
3 A. Correct.  
4 Q. -- Mr. Lee discuss that hypothetical  
5 during the break? 07:43:13  
6 A. No.  
7 MR. LEE: Mine made sense.  
8 Q. (By Mr. Santacana) Okay. Do you think  
9 it's an appropriate price in exchange for SWAA-off  
10 data to be paid \$3? 07:43:35  
11 A. For a class member, yes.  
12 Q. And for you?  
13 A. If I were a class member, I would accept  
14 \$3. I cannot be a class member, but if I were a  
15 class member, I would. 07:43:53  
16 Q. Did you talk about that question you  
17 refused to answer earlier with your lawyer during  
18 the break?  
19 A. No, I did not.  
20 Q. You just decided to answer it now? 07:44:00  
21 A. Yes, that is correct.  
22 Q. Why did you change your mind?  
23 A. Because I -- I thought of if I could say  
24 it as if I were a class member, then I would agree.  
25 Then I could answer. 07:44:11

1 But I wasn't -- I wasn't thinking of 07:44:13  
2 myself as a class member, because I couldn't be a  
3 class member before. Or I can't be a class member  
4 now. So I didn't think of that way to answer it.

5 MR. SANTACANA: Okay. I want to take 07:44:24  
6 five minutes, and then we'll see where we can end  
7 up.

8 THE VIDEOGRAPHER: Off the record. The  
9 time is 7:43.

10 (Recess taken.) 07:47:48

11 THE VIDEOGRAPHER: We are back on the  
12 record. The time is 7:48.

13 Q. (By Mr. Santacana) Okay. I just have a  
14 few more questions for you.

15 So first, keeping with the last thing we 07:48:51  
16 were talking about, do you have sWAA turned on our  
17 off on your Google accounts?

18 A. I don't know the answer to that.

19 Q. Do you know if you checked it at any  
20 point since you were retained for this case? 07:49:07

21 A. I do.

22 Q. You did check it?

23 A. I do know that -- I do know if I checked  
24 it.

25 Q. Did you change the setting when you 07:49:13

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1 checked it? 07:49:15

2 A. No. I didn't -- I did not check it. I  
3 purposely did not check it.

4 Q. I see.

5 A. Once I was retained on this case. 07:49:21

6 Q. Because you wanted to remain independent?

7 A. Because I just thought it would be better  
8 off not to mess with any data -- with anything that  
9 Google might be collecting.

10 Q. Why? 07:49:35

11 A. Because I'm -- I'm an expert in this  
12 case, and so I don't -- I don't want to, like,  
13 change any settings or do anything.

14 Q. Does it concern you that Google may be  
15 collecting data about you that you did not consent  
16 to? 07:49:46

17 MR. LEE: Beyond the scope.

18 Answer if you can.

19 THE DEPONENT: Yes, but I'm not going to  
20 change any behaviors because I'm -- as a member of  
21 this expert team. 07:49:57

22 Q. (By Mr. Santacana) Okay. Relating to  
23 your actual damages opinion, \$3 per device, do you  
24 recognize that the opinion, as you've rendered it,  
25 could result in class members who had lots and lots 07:50:15

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1 of data transmitted to Google being paid less than 07:50:18  
2 class members who had very little data transmitted  
3 to Google?

4 A. Yes, I do.

5 Q. That's a possibility in your opinion? 07:50:27

6 A. Yes, it is.

7 Q. Why are you comfortable with that?

8 A. I'm comfortable with that because if you  
9 look at market-to-market transaction in the Ipsos  
10 study, it does not -- it does not pay users based 07:50:38  
11 on the amount of -- the amount of data that they  
12 transmit to Google. And that's, I think, the best  
13 comparable transaction to -- to use for my actual  
14 damages.

15 Q. Is it fair to say, then, that you do not 07:51:03  
16 believe actual damages varies depending on the  
17 severity of the privacy intrusion on a  
18 class-member-by-class-member basis?

19 A. I don't think that that's fair to say. I  
20 think that it -- what's fair to say is my 07:51:17  
21 calculation is, at the -- at the end of the day,  
22 conservative and is the best available calculation  
23 based on the information that was available.

24 We talked about this earlier, that  
25 there's not information available as it relates to 07:51:33

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1 that in this case. And so it's not something I 07:51:36  
2 could have studied.

3 Q. Okay.

4 A. Even -- even if -- even -- even if it's  
5 something that I needed to. 07:51:47

6 Q. So leaving your personal beliefs aside, I  
7 will ask it differently.

8 Your opinion on actual damages, in fact,  
9 does not vary depending on the severity of the  
10 privacy intrusion that a class member experienced; 07:52:04  
11 is that fair to say?

12 MR. LEE: Objection. Asked and answered.

13 THE DEPONENT: It -- it does not -- it  
14 does not vary based on the data, the amount of data  
15 that was ill-gotten, as you -- as you had put it 07:52:15  
16 earlier.

17 Q. (By Mr. Santacana) And it does not vary  
18 based on the nature of the ill-gotten data, right?

19 A. Well, I feel like we're always talking  
20 about SWAA data here, so -- 07:52:29

21 MR. LEE: SWAA-off data?

22 THE DEPONENT: SWAA-off data.

23 Q. (By Mr. Santacana) I'll be more  
24 specific.

25 A. So there's no variance in my opinion. 07:52:36

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1 Q. It does not vary based on the degree to 07:52:38  
2 which the ill-gotten sWAA-off data is more or less  
3 private to that person?

4 MR. LEE: Objection. Vague as to  
5 "private." 07:52:49

6 THE DEPONENT: It -- I mean, I think -- I  
7 think you understand, my -- my calculation does not  
8 vary based on -- based on a particular person.  
9 It -- it only varies based on the number of devices  
10 that someone might have. 07:53:06

11 Q. (By Mr. Santacana) On that subject, why  
12 did you decide to make it per device, since people  
13 don't usually use, except for me, two devices at  
14 once?

15 MR. LEE: I was going to say. 07:53:19

16 THE DEPONENT: I think that -- I think  
17 that it's most similar to the Ipsos study, and I  
18 think that that -- that that's an appropriate way  
19 to consider that.

20 If people -- if people do have multiple 07:53:34  
21 devices, and they use them for different things,  
22 then they may look at their privacy as it relates  
23 to those different devices --

24 Q. (By Mr. Santacana) I see.

25 A. -- on a device-by-device basis. 07:53:47



1 Q. You opined in the Brown case that you 07:53:55  
2 referred to earlier that the actual damages in that  
3 case was \$3 per device, right?

4 A. In the Brown case?

5 Q. Uh-huh. 07:54:09

6 A. No, I don't think that that's correct.

7 Q. What was your actual damages opinion in  
8 that case?

9 A. Can I --

10 Q. Wasn't it based on the Ipsos panel? 07:54:22

11 A. Yes, it was.

12 Q. But the number was not \$3 per device that  
13 you arrived at?

14 MR. LEE: You were going to ask me a  
15 question -- you were going to say something -- 07:54:34

16 THE DEPONENT: Yeah. I'm worried -- I  
17 don't know, like, what I can say or what I can't  
18 say.

19 MR. LEE: That's what I thought you were  
20 concerned about. So there are protective orders in 07:54:40  
21 both cases, and I think we have to be very careful,  
22 because I don't want to have Mr. Lasinski  
23 inadvertently reveal something that he shouldn't.

24 When you talked about some areas that I  
25 thought there was overlap and there wasn't any 07:54:59

1 confidentiality concerns, I let it go. But I don't 07:55:02  
2 know where this is going.  
3 But I think Mr. Lasinski seems concerned,  
4 so --  
5 MR. SANTACANA: Well, you're using my 07:55:13  
6 time right now. If you don't have an objection,  
7 then I'm going to keep going.  
8 MR. LEE: Okay. I might -- I might have  
9 him not answer. But -- but keep going, and we'll  
10 see. 07:55:21  
11 Q. (By Mr. Santacana) Okay. Your opinion  
12 in that case was actual damages was \$3 per device  
13 per month; is that right?  
14 MR. LEE: Go ahead.  
15 THE DEPONENT: I don't think so. I don't 07:55:36  
16 think that's right.  
17 Q. (By Mr. Santacana) What do you think it  
18 was?  
19 A. I think -- I think, if I remember  
20 correctly, it was \$3 per Web extension per month. 07:55:47  
21 Q. Okay. Well, it wasn't.  
22 A. Okay.  
23 Q. But --  
24 A. Well, I don't -- I don't remember,  
25 obviously. 07:56:08

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1 Q. Sounds like. 07:56:10

2 But you relied on that same Ipsos study  
3 to evaluate actual damages in the Brown case,  
4 right?

5 A. I did, yes. 07:56:18

6 Q. And the -- the figure that you came up  
7 with was \$3, and it was per something?

8 A. Correct.

9 Q. And to your memory, it was not per  
10 device; it was per something other than per device? 07:56:28

11 A. I don't really remember, to be honest,  
12 what it was.

13 Q. Why in that case did you arrive at \$3 as  
14 the amount? Was that a coincidence, or did your  
15 calculations in that case mirror your calculations 07:56:41  
16 here?

17 MR. LEE: Beyond the scope of redirect.

18 Go ahead and answer.

19 THE DEPONENT: I think -- I think in that  
20 case, I believe -- I think in that case, it was -- 07:56:54  
21 there's \$3 in the Ipsos study that relates to the  
22 Web browser -- to Web browser. And I think that  
23 that's what I was using in that case, not -- not  
24 device.

25 But I -- to be honest, I don't -- I don't 07:57:13

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1 recall. 07:57:17

2 Q. (By Mr. Santacana) Okay. Then I --  
3 thank you for that clarification.

4 What I was asking was just, was the fact  
5 that you ended up at \$3 per something, just the 07:57:24  
6 fact of the number 3, was it a coincidence that  
7 that was 3, and it's 3 in this case? Or is there a  
8 reason that they mirror each other?

9 MR. LEE: Beyond the scope of redirect.

10 Go ahead. 07:57:38

11 THE DEPONENT: I don't know that it's  
12 actually -- I don't know that it's actually a  
13 coincidence. I think if you look at -- it's not a  
14 coincidence, because the Ipsos study has \$3 per Web  
15 browser, if I remember correctly. And in this 07:57:50  
16 case, it has \$3 per device, mobile phone and  
17 tablet.

18 So I was looking at different data points  
19 within the study, if I remember correctly.

20 The fact that they're paying -- the fact 07:58:02  
21 that it ends up being \$3 is because those users are  
22 being paid \$3 based on the study.

23 Q. (By Mr. Santacana) I see. Okay.

24 MR. SANTACANA: That is all I have.

25 MR. LEE: Me, as well. 07:58:26

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1 THE VIDEOGRAPHER: Okay. 07:58:27

2 MR. SANTACANA: I will designate  
3 "Attorneys' Eyes Only." And you can take your time  
4 on the transcript.

5 THE VIDEOGRAPHER: We are off the record 07:58:36  
6 at 7:58 p.m., and this concludes today's testimony  
7 given by Michael Lasinski.

8 The total number of media used was eight  
9 and will be retained by Veritext Legal Solutions.

10 (TIME NOTED: 7:58 P.M.) 07:58:51

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1 I, MICHAEL J. LASINSKI, do hereby declare  
2 under penalty of perjury that I have read the  
3 foregoing transcript; that I have made any  
4 corrections as appear notes; that my testimony as  
5 contained herein, as corrected, is true and  
6 correct.

7 Executed this \_\_\_\_ day of \_\_\_\_\_,  
8 2020, at \_\_\_\_\_, \_\_\_\_\_.

9  
10  
11  
12 \_\_\_\_\_  
MICHAEL J. LASINSKI

1 I, Rebecca L. Romano, a Stenographic Certified  
2 Shorthand Reporter of the State of California, do  
3 hereby certify:

4 That the foregoing proceedings were taken  
5 before me at the time and place herein set forth;  
6 that any witnesses in the foregoing proceedings,  
7 prior to testifying, were administered an oath;  
8 that a record of the proceedings was made by me  
9 using machine shorthand which was thereafter  
10 transcribed under my direction; that the foregoing  
11 transcript is true record of the testimony given.

12 Further, that if the foregoing pertains to the  
13 original transcript of a deposition in a Federal  
14 Case, before completion of the proceedings, review  
15 of the transcript [ ] was [X] was not requested.

16 I further certify I am neither financially  
17 interested in the action nor a relative or employee  
18 of any attorney or any party to this action.

19 IN WITNESS WHEREOF, I have this date  
20 subscribed my name.

21 Dated: July 5, 2023

22  
23   
24

Rebecca L. Romano, RPR,  
CSR. No 12546

Eduardo Santacana

esantacana@willkie.com

July 5, 2023

RE: Rodriguez, et al. v. Google, LLC

6/29/23, MICHAEL J. LASINSKI, JOB NO. 5971107

The above-referenced transcript has been  
completed by Veritext Legal Solutions and  
review of the transcript is being handled as follows:

\_\_\_ Per CA State Code (CCP 2025.520 (a)-(e)) - Contact Veritext  
to schedule a time to review the original transcript at  
a Veritext office.

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Transcript - The witness should review the transcript and  
make any necessary corrections on the errata pages included  
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The witness should then sign and date the errata and penalty  
of perjury pages and return the completed pages to all  
appearing counsel within the period of time determined at  
the deposition or provided by the Code of Civil Procedure.

\_\_\_ Waiving the CA Code of Civil Procedure per Stipulation of  
Counsel - Original transcript to be released for signature  
as determined at the deposition.

\_\_\_ Signature Waived - Reading & Signature was waived at the  
time of the deposition.

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1     \_\_\_ Federal R&S Requested (FRCP 30(e)(1)(B)) - Locked .PDF  
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3     make any necessary corrections on the errata pages included  
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5     The witness should then sign and date the errata and penalty  
6     of perjury pages and return the completed pages to all  
7     appearing counsel within the period of time determined at  
8     the deposition or provided by the Federal Rules.  
9     \_X\_ Federal R&S Not Requested - Reading & Signature was not  
10    requested before the completion of the deposition.

1 Rodriguez, et al. v. Google, LLC

2 MICHAEL J. LASINSKI (#5971107)

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| 3 | E R R A T A S H E E T |
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21 REASON\_\_\_\_\_

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24 WITNESS Date

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[& - 2.1.]

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[2.2 - 5]

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[facts - firebase]

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[intention - knittel's]

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[knittel's - leaks]

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[opinions - part]

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[profits - question]

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[state - supplemental]

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS  
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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